IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

Exhibit FF

- -

Joseph Carrillo, Case No. 3:21-cv-00026-FM

Plaintiff,

v.

Union Pacific Railroad Company,

Defendant.

- -

REMOTE DEPOSITION OF

DR. JOHN CHARBONNEAU

DATE: November 18, 2021

TIME: 1:01 p.m. CST

PLACE: Veritext Virtual Videoconference

REPORTED BY: Jayne M. Seward, RPR

Job No: 4889286

* * APPEARANCES * *

On Behalf of the Plaintiff: (via videoconference):
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I N D E X

REPORTER'S NOTE: All quotations from exhibits are reflected in the manner in which they were read into the record and do not necessarily indicate an exact quote from the document.

P R O C E E D I N G S

DR. JOHN CHARBONNEAU,
duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. KASTER:

Q. Dr. Charbonneau, I know you've been deposed previously. I'm familiar with your depositions in other cases that you have appeared on behalf of Union Pacific, so I won't spend too much time with the ritual.

I'll just tell you that if you don't understand my question, please ask me to repeat it. I'm happy to clarify.

A. I'll do that.

Q. If you need a break at any point -- I don't anticipate this being a long deposition. I assume it will take an hour to an hour and a half, but if you need a break during that time, just let me know.

A. I will do that.

Q. You've been placed under oath here today. What does that mean to you?

A. As the oath says, I'm sworn to tell the truth and answer your questions truthfully and completely.

Q. Do you still have a relationship with Union Pacific Railroad?

A. I do.

Q. And what is your relationship?

A. I am the associate medical director in Health and Medical Services.

Q. And how long have you worked in that capacity?

A. Well, I've been doing work for Union Pacific for 32 years. I actually started in November of 1989. I -- along the way there have been multiple titles, but, for all intents and purposes, it's always been to make fitness-for-duty determinations.

Q. And your educational background?

A. Undergraduate a double major in biology and chemistry. I have a medical degree from Indiana University. Internship in general surgery at the University of Colorado Health Sciences Center and an occupational medicine residency at the University of Utah.

Q. And so for the past 30 or more years you've been doing fitness-for-duty determinations for Union Pacific?

A. Yes, that's been part of my work.

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Q. So explain that answer, please.
A. I've also been a practicing occupational medicine physician throughout essentially all of that time. So until the last three years my work for Union Pacific Railroad was only part-time, and I was a practicing clinician and a consultant occupational medicine physician. I really have done that work since 1978. But even while I've done some work for Union Pacific, I have had other jobs or positions or other work to do along the way.
Q. So it sounds like three years ago you started as a full-time associate medical director, correct?
A. Yes. What happened on August 30th of 2018 I stopped seeing patients, and so the only work that I'm doing now is when I work for Union Pacific Railroad.
Q. What caused that event to occur from Union Pacific's side? Do you know?
A. I'm sorry. I don't understand that question.
Q. Okay. Let me put it in plain English. Why did they hire you as a full-time associate medical director? Do you know?
A. Well, first of all, I'm still a

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consultant. And, number two, nothing really changed much at Union Pacific Railroad's end. I just stopped seeing patients at 41 years of doing it.
And so since I stopped seeing patients, I've been doing a little bit more work. I'm the only associate medical director now, so my work has kind of expanded to fill my available time. And so the change -- it wasn't so much on UP's end as on my end.
Q. How are you paid?
A. I have a contract with Union Pacific Railroad. There is a retainer for up to 100 hours per month. And if I go over that, I just bill them on an hourly basis. It's -- it's still the same basic hourly rate but it just --
Q. Which is what?
A. $180 per hour. And, Mr. Kaster, just -- just to make sure that I've clarified, the retainer is $18,000 per month because it's for 100 hours per month. But if I go over that, particularly now since we don't have any other associate medical directors, I just bill them for the additional hours at the same rate, $180 per hour.
Q. Do you get paid a particular number of hours for a particular rate for reviewing a

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particular employee's fitness-for-duty determination? In other words, is it by the head?
A. No. It's by the time spent.
Q. So it doesn't matter how many or how few people you review; it's the amount of time spent?
A. Yes, that's fairly said. Again, there's a 100-hour minimum per month, and I can't remember the last time it was under 100 hours worth of work in a month. And if I go over 100 hours, I bill them by the hour for time spent.
Q. Do you have a target amount of time that you are dedicating to a given person's case?
A. No. Just as long as I -- whatever time it takes me to do the cases that I need to do on any given day, that's what I've spent.
Q. Is there a typical amount of time spent on a given case?
A. No. It really depends on the nature of the medical conditions involved, the complexity of the case, things like that. And volume of records. In this day and age, with electronic medical records, we get huge volumes of records sometimes.
Q. Are you a neurologist?
A. No.

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Q. Have you ever proclaimed that you are an expert in neurology?
A. No.
Q. You've not held yourself up as an expert in neurology?
A. No.
Q. Do you remember Joseph Carrillo's case?
A. I do now because I've been preparing for this deposition. When I was notified that I had to do a deposition, I didn't remember the case.
Q. What do you remember now that your recollection is refreshed?
A. Well, I've been through all the records start to finish and all the entries in eHealthSafe and things like that. So I understand what the questions were at the beginning, the processes we went through and the decisions that were made.
Q. Did you receive any kind of incentive compensation from Union Pacific Railroad for anything?
A. Anything to do with this case do you mean or what?
Q. In particular certainly, but do you receive any kind of incentive compensation from Union Pacific?

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A. No. Again, we talked before about the basic financial agreement. And when I do legal work, that's billed outside of those hours in the retainer that we talked about.
Q. So legal work being like this deposition today?
A. Depositions and trial testimony, yes, sir.
Q. And what is that rate?
A. It is variable. There's -- there's a rate for travel, and that is, I think, $150 per hour. There is a rate for review of medical documents in preparation, and that's $300 per hour. Depositions are done at $500 per hour. And if I go to trial, I think -- I'd have to look at the contract. It's either 700 or $750 per hour.
Q. On how many occasions have you been to trial defending Union Pacific related to a fitness-for-duty evaluation? Do you know?
A. Well, when I'm involved it's almost always for fitness-for-duty evaluations, so there are kind of two basic categories. One would be on-duty injuries or alleged on-duty injuries, and the other would be off-duty medical conditions such as Mr. Carrillo's case.
Q. So how many times?

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A. I'm often asked that. I'm going to tell you about 50, I think, over the 32 years. Early on it was mostly on-duty injury cases, and the last two or three years more off-duty medical conditions.
Q. More disqualification based on restrictions you mean?
MR. ORTBALS: Objection to the form of the question. It's argumentative. You can answer.
THE WITNESS: Okay. It is the -- my involvement has been to explain the decision making that we've made in a case. I mean, obviously we wouldn't be doing a deposition if there weren't litigation involved. So it's -- it has to do with decisions, fitness-for-duty decisions that we have made along the way.
BY MR. KASTER:
Q. Which resulted in people losing their jobs?
MR. ORTBALS: Objection, form. You can answer.
THE WITNESS: Okay. I don't know if they -- if they've lost their jobs. I'm not involved with things after the fitness-for-duty determination is made. I don't always know what the outcome of the case is. Such as in Mr. Carrillo's

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case, I didn't know what happened after the fitness-for-duty determination had been made. So I'm -- I don't know always what the final outcome is about a combination of the restrictions or final placement and things like that.
BY MR. KASTER:
Q. Has there been any change in the rules or procedures regarding fitness-for-duty evaluations since Dr. John Holland has departed?
A. I would tell you that basically the way we do our job on a day-to-day basis has not changed.
One step that has changed is, when we make a final fitness-for-duty determination and someone notifies the employee, either I or our new chief medical officer, Dr. Laura Gillis, is on the call, and we kind of do the explaining of the fitness-for-duty process and the decision to the employee.
So the doctors making the decisions now participate in the calls notifying the employee. Beyond that, it's pretty much the same process.
Q. Is that a communication that can result in a change of mind?
A. We explain the process -- excuse me. I'll tell you how I do the calls. I explain the

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fitness-for-duty process undertaken. I tell them what the decision has been. If it ends in restrictions, I explain what the restrictions are, and I always, as part of those calls, ask the employee if there is anything they want to say or if they have any questions for me.
We -- it can end in a give-and-take discussion whereby we agree to go back and get more information, if needed. That -- I will tell you that doesn't happen very often because we spend a lot of time getting the medical records that we need to make the decision in the first place.
So I won't -- I won't say that very many have been changed or we've gone through another iteration of looking at information, at least not with that initial call to explain the fitness-for-duty determination. So it can, but honestly it doesn't happen very often just because of the diligence we do before we make the decision.
Q. How many times has it happened?
A. As I've said, there's the first iteration is what I'm involved in. There have been reconsideration cases that go to the chief medical officer. So I don't know how often something like that leads to a different decision or amending the

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decision. I'm just not involved in that.
I was involved in a case recently where we're trying to determine whether a guy had a TIA or he had symptoms related to a migraine. So when I called to tell him about the decision, we agreed to get further clarification from his neurologist, and that process is ongoing right now.
Q. How many times have you changed your mind?
A. Well, I -- it's not a matter of changing the mind. It's being open to submission of additional information and changing the decision if it's warranted. I will -- and, as I said earlier, that doesn't happen very often because of the diligence we try to do before we make the initial decision.
As far as how often the chief medical officer might change the decision later based on new information or input from an outside expert, I can't tell you how often that happens. I'm not aware of that.
Q. You still don't do a physical exam of that patient or employee, right?
A. Do I do a hands-on physical examination?
Q. Does anyone in the fitness-for-duty department do a hands-on physical evaluation as a

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part of the fitness-for-duty process?
A. No. We rely on medical records submitted by the employee.
Q. Were you the decision maker in Mr. Carrillo's case?
A. I was involved in the case up to the time we requested an outside opinion from Dr. Frankel, and after that I don't believe that I was involved in the case. So I did not make the final decision in his case.
Q. Who did?
A. Dr. Holland.
Q. Well, Dr. Holland made the decision in June of 2018. Are you aware of that?
A. Based on what I reviewed, that's when he wrote up his memo, that's correct.
Q. Do you know when Dr. Frankel submitted his outside opinion?
A. Dr. Holland put in his memo that he had talked with Dr. Frankel and based his final decision on the medical information to that point, plus his conversation with Dr. Frankel. I believe Dr. Frankel's report came in later than that, a month or two later.
Q. August of 2018, right?

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A. I don't remember the date. That's about a month or two later than June, so, yes.
Q. Okay. Did you ever look at drafts of his report?
A. Of whose report?
Q. Dr. Frankel's report.
A. No. I don't think I was involved in the case after we sent the case to Dr. Frankel for his review.
Q. It looks to me, from records, that Dr. Frankel was reviewing quite a few reports on a monthly basis.
Do you recall that?
A. No. In fact, I didn't have much interaction with Dr. Frankel in my cases to -- to the best of my recollection. The way it was ultimately set up is that it could have gone to a number of neurologists in the department at the University of Nebraska Medical Center.
Q. As a regular ordinary course of business, did the fitness-for-duty evaluators from Union Pacific, such as yourself, see drafts of reports from the so-called independent expert?
MR. ORTBALS: Objection to form. It's argumentative. You can answer.

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THE WITNESS: I don't believe that I saw drafts of any such reports. I suppose it's possible that I could have seen kind of their first submission and later they were asked to look at additional information, but I can't even remember one of those cases off the top of my head, and so I did not routinely look at drafts from the outside experts.
BY MR. KASTER:
Q. My question is different than that. You said: I cannot remember "routinely" looking at drafts.
Did you ever look at a draft from an independent expert? Yes or no?
A. I don't believe so, no.
Q. Okay. I'm going to share a document on the screen that is the Medical Comments History for Mr. Carrillo. I'm sure that you probably reviewed this in preparation for your deposition here today.
Is that right?
A. I reviewed the Medical Comments History from the case. I'm presuming the one I read is Bates labeled so I'm presuming it's the same one that you're going to put up.
Q. Let me share my screen here.

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THE REPORTER: I believe this was marked yesterday, Jim?
MR. KASTER: Yes.
THE REPORTER: As Exhibit 51?
MR. KASTER: 51. That sounds right, Jayne. Thank you.
BY MR. KASTER:
Q. Do you see the Medical Comments History, Doctor?
A. Yes, I do.
Q. So I've highlighted a particular entry here. It's Bates 89. This is the entry for December 8 of 2017.
Did you write this entry?
A. Are you talking about the one that starts with the word "Bridgette"?
Q. Yes.
A. Yes, I did author this.
Q. It says "The employee has provided records from two providers in his neurologist's office, Dr. Aguilar and his nurse practitioner. All of those notes are meticulously documented. The notes demonstrate that since the LOC event" -- that's the loss-of-consciousness event -- "in late June of 2017, the employee has had; 1, headaches, 2;

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memory problems, 3; light sensitivity, 4; weight loss, 5; fatigue/weakness, amongst other symptoms. The employee's brain MRI and EEG are reported as normal. We still do not have the ETT report."
What's an ETT report?
A. Exercise Tolerance Test.
Q. "The neurologist is considering several diagnoses which include; Episode of unresponsiveness; Single unprovoked seizure; single provoked seizure."
Then you say "He is still on activity restrictions for driving/safety sensitive activities. He has been referred to the Mayo Clinic for additional evaluation. He will be seen in follow up by his neurologist in January, 2018."
Then you say "The employee remains not fit for duty. 2, the available documentation points to a seizure."
What pointed to a seizure?
A. Just, first, as a point of clarification, this was written on December 8th of 2017, as you correctly said. By this time we had been working on this case for several months, and so this is the most recent information and I'm summarizing this new submission of information. This builds upon all of

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the other information that we had and reviewed to that point. So, again, the note speaks for itself; it's taken right from Dr. Aguilar's note.
So the process of him getting up, taking a shower, probably brushing his teeth, and then heading back to the bedroom when he had this precipitous loss-of-consciousness event, part of which was witnessed by his wife, referred to as girlfriend in one or two records I believe, with him being unconscious, some jerking motions, and a period of loss of consciousness and a period of confusion afterwards.
So it was this, and the other information, the absence of an obvious cardiology problem, and then this new information on the neurologic front.
So, again, we try -- you've seen my notes. They're fairly thorough when I write them and we -- each new submission of information builds upon the foundation of the other information that we have.
So at this point I thought this was a seizure, and we were doing the diligence trying to twice check our work by having an outside doctor take a look at it, and this was standard for me to -- to request authorization for an outside neurology review.

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Q. All right. Well, you understand that a treating neurologist rendered a differential diagnosis.
You understand that, right?
A. Yes.
Q. The treating neurologist who had examined Mr. Carrillo had been unable to reach a definitive diagnosis.
You're aware of that?
A. Yes. And what he did -- again --
Q. I didn't ask you what he did. I said -- I asked you a simple question. Now, this can be a short deposition or a very long one depending on if you want to answer my questions.
So the treating neurologist was unable to render a definitive diagnosis.
Is that true?
A. That's true. He didn't come down to a final one-item diagnosis.
Q. Did you?
A. I came -- again, putting things in context, he comes up with an MDM, Medical Decision Making, or a differential diagnosis, another term essentially for the same thing, and he embarked upon a medical evaluation that -- that kind of eliminated

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some of those options.
And so it appeared to me that the totality of the information available pointed to a seizure. I recognized the possibility that it would be a single episode was a possibility, and I asked for the neurology evaluation to help us sort out the probabilities, if you would.
Q. So you asked for a further neurology review?
A. Yes, that's what the last line in this note says. I was asking for authorization for a neurology file review.
Q. So did you render a definitive diagnosis?
A. I, like Dr. Aguilar, narrowed down the possibilities, and in an effort to make the best decision we could make on the available information, we asked for a neurology file review. As I said earlier, I wasn't part of the final decision making, and Dr. Holland made the final decision.
Q. Did you render a definitive diagnosis?
A. Again, I think that I narrowed down the possibilities to syncope versus an unprovoked seizure, and that's what we asked Dr. Frankel to help us sort out.
Q. Well, syncope is simply the loss of

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consciousness precipitated by something going on with your heart, right?
A. There -- there can be multiple causes for syncope. Most episodes of syncope are cardiovascular in nature.
Q. So were you able to say one way or the other it's a seizure or it's syncope?
A. As I said, I got to a point where I thought it was one of two diagnoses. More likely seizure. Then I asked for the neurology file review. And, again, a couple times already I've said that I was kind of out of it after that, out of the case after that.
Q. This entry right below here on December 8th of 2017, Bridgette Ziemer says -- now, this is actually -- so we're putting this in the order of time, this is the entry before the entry we were just looking at, right?
A. Yes.
Q. This is 8:15. Your entry is 8:37 a.m., right?
A. That's right.
Q. Okay. "Dr. Charbonneau, this employee submitted all the medical records you requested and responded regarding Gabapentin. See his email

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response below. Please review and advise."
Then it says "I have been taking Gabapentin for over two years since my first elbow surgery. Dr. Llewelyn Williams prescribed it because I had a little numbness after my first surgery on my right elbow. I have been taking it since then."
So he's taking it for pain, right?
A. Pain and what we call paresthesia. He had two procedures on his elbow. He had some residual pain, and he also had some tingling in his hand as a result of an ulnar nerve problem in his elbow.
So it's hard to tell from the records exactly why he was taking it. My sense was that he was taking it for both problems.
Q. For pain and what else?
A. Tingling from his ulnar -- as a residual from his ulnar nerve problem.
Q. All right. So let's go back in time. We'll go to another record, December 1st of 2017. And this is on Bates page number 90 -- 91. It looks like it's on 91.
A. Mr. Kaster?
Q. Yeah.
A. May I please stop you for one minute. I

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want to change the layout on my computer here. I have the pictures of you and Mr. Ortbals on the right-hand column. So I'm not seeing the right-hand margin, and I want to see if I can get those.
Q. Why don't I try this. Can you read it?
A. It needs to be a little bigger.
Q. Let me try that.
MR. ORTBALS: So, Doctor, if you go up to view options at the top of the screen --
THE WITNESS: Yes.
MR. ORTBALS: -- and click side-by-side mode.
THE WITNESS: Side-by-side speaker or side-by-side gallery?
MR. ORTBALS: You can do either depending on whether you want to see just the speaker or all of us. Gallery would show you all of us. Speaker, I think, would just show the speaker.
THE WITNESS: Yeah, that's where I was. Let me see something here. No, I can't make that any bigger. What I was trying to do is get you folks across the top and then I could see what Mr. Kaster puts up.
MR. KASTER: Well, I can make this a little bigger if you can't read it right now. Now

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can you see everyone and read the document?
THE WITNESS: That's getting better. If you could make it just a little bigger, I think it will be adequate.
MR. KASTER: Fine. How's that?
THE WITNESS: Better.
MR. KASTER: Would you like it bigger?
THE WITNESS: One more, yes.
MR. KASTER: Okay. Does that work?
THE WITNESS: I think I can live with that, yes.
MR. KASTER: Okay. I wasn't asking you whether you could live or not live with that, but I'm trying to make it convenient for you. So just let me know if you want me to make it a little bigger and I can try.
THE WITNESS: As long as we're going to do, like, a paragraph like this, if you could please make it bigger.
MR. KASTER: Okay. Because that's what I'm going to do; we're going to focus on this paragraph. How's that?
THE WITNESS: Much better.
BY MR. KASTER:
Q. So I think this is the first time you

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touched this case, right?
A. Oh, no. I think I was involved before. I think I was involved before this.
Q. Okay. All right. It says -- you talk about: "I did not find the date of the event in these records."
Actually, just for the record, there is an entry on July 14th of 2017, which reads as follows: "The employee had a precipitous loss of consciousness and was found on the floor by his wife. (There is no indication of the length of the LOC period) and had bitten his tongue. He must be evaluated for LOC and have seizure ruled out. Action: Not fit for duty. He needs both neurology and cardiovascular evaluations for LOC/seizure. Thanks, Dr. Charbonneau."
So there is a prior entry. Do you have those records in front of you? Would you like to go to that record first?
A. Well, if you're going to ask me questions about it, then I think we should go to that entry, yes.
Q. I'm not going to ask any more questions about it. It's just the foundation for your review of this matter, Mr. Carrillo's case.

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A. Okay. Then we can go forward with this one if you want.
Q. Then you have a description in the first couple sentences, and then you say "All of this sounds like a seizure. He is reported to have no medical conditions, but he takes Gabapentin 600 milligrams twice per day. This is a seizure medication."
Let me ask you a question. Would it make a difference if this was a provoked seizure, as opposed to an unprovoked seizure?
A. Would it make a difference how so? Do you mean at the final determination?
Q. Yes.
A. Yeah, it would make a big difference.
Q. Because?
A. Because if there is a documentable or credible reason for attributing the seizure to a medical event, let's say, then if you can control the underlying medical event and get it to a point where it's not likely to occur again, then the duration of the medical restrictions is substantially reduced.
Q. Gabapentin is an antiseizure medication, right?

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A. I believe that that's why it was originally developed, yes. It has other uses, but, yes.
Q. And at the time he wasn't taking the Gabapentin, right?
A. At what time?
Q. At the time of the loss of consciousness event.
A. His report, I believe, was that he had not taken it for four or five days.
Q. Now, you go on to describe the records that you have seen here, and you end with: "I think we will need a neurology file review on this case once we have all of the listed information."
Why did you think that you needed a neurology file review?
A. Well, again, it was -- as I said earlier, it's an attempt to be comprehensive in our review, to get as much detailed information as we can, and then to make the appropriate decision in the case.
So there's information, cardiovascular information that did not add up to an obvious reason for a syncopal episode. There was information in the -- I'll call it neurologic realm, but it came from multiple providers, that made it sound like a

seizure.
And in the interest of being comprehensive and fair and coming to the right decision, I wanted to have this looked at by an outside neurology expert.
Q. So it was important to have an outside neurology review to be as clear and certain as you could be, right?
A. We wanted to make the best possible decision that we could make given the limitations of our information set, yes.
Q. So that would be important in that circumstance to have an independent neurology review, right?
A. I mean, that's the idea. We had experts from the University of Nebraska Medical Center who were willing to review the cases, and that's -- that's what we did. That was the -- those were the physicians, the outside physician group that we used.
Q. And you wouldn't want to put your thumb on the scale, right?
A. I didn't put my thumb on the scale, sir.
Q. That wasn't my question.
My question is: In this circumstance,

when you're seeking an outside independent review to make certain what the proper and best decision is, would it be important not to put your thumb on the scale?
A. I think that's -- that's routine. I think it is important not to put the -- our thumb on the scale.
Q. Right. I'm going to move to a different document here.
Do you see this email of February 2nd of 2018?
A. I do.
THE REPORTER: Is this a new exhibit, Mr. Kaster?
MR. KASTER: This is a new exhibit. Thank you, Jayne. And let's be clear about what the Bates numbers are. I'll get the Bates numbers here so we're clear. It's 2039 and 2040. And the number is?
THE REPORTER: The number is 53.
MR. KASTER: Thank you.
(Exhibit 53 marked.)
BY MR. KASTER:
Q. Dr. Charbonneau, do you recognize Exhibit 53?

A. I do.
Q. You're copied on an email sending the file review materials to Dr. Frankel, the outside neurologist, right?
A. Well, the email at the top is from Deb Gengler, G-E-N-G-L-E-R, the director of Medical Services, to Bridgette Ziemer, and I am copied on that email. That's right.
And basically what it's saying is that prepare the file review to go to Dr. Frankel, and she asked me to write the referral letter. By this time I had already done it.
Q. And it describes the electrician from El Paso, Texas is currently on medical leave of absence for syncope and collapse, right?
A. SI, I think, stands for sudden incapacitation. Currently on medical leave of absence for syncope and collapse.
Q. Did you render an opinion that Mr. Carrillo had a greater than 1 percent risk of sudden incapacitation based upon your consideration of his medical records?
A. No. As I've said a couple times now, I was involved in the case up to the point of crafting the letter to Dr. Frankel, and then I'm not sure

that I touched the case after the case went to Dr. Frankel for review.
Q. So did you ever render the opinion at any time that Mr. Carrillo had a greater than 1 percent risk of sudden incapacitation based on his loss-of-consciousness event?
A. No. As I said, that final decision about what was the most likely diagnosis was made after I was no longer involved in the case to the best of my recollection.
MR. KASTER: All right. I'll mark a separate document here, so this will be 54.
(Exhibit 54 marked.)
BY MR. KASTER:
Q. Do you see a letter dated January 10th of 2018?
A. Yes.
THE REPORTER: Are there Bates numbers, Mr. Kaster?
MR. KASTER: Yeah, there are, Jayne. This was previously marked as a part of a different, a longer exhibit. It's Bates Nos. 411 through 414.
THE REPORTER: Thank you.
BY MR. KASTER:
Q. So a couple of questions about this

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letter. It's signed by Dr. Holland.
You see that, right?
A. Yes.
Q. Did you write the letter?
A. I authored the first draft of it, yes.
Q. What happened to the first draft? Do you know?
A. I sent it about the time -- or actually on or about January 10th I sent it to Health and Medical Services. I sent it to Bridgette Ziemer, Theresa Rodino and to Deb Gengler, and I asked them to review and edit it for accuracy.
This is the corrected one because I had spelled "January" wrong in mine. I put an M in the middle of "January" rather than an N. So this is the one that they edited and corrected that mistake on my part.
Q. How do you know you put an M in "January"?
A. It was in the document that I sent to the three people that I just named.
Q. So did you review that in advance of your deposition, the document that you sent?
A. Yes. I'm pretty sure I did, yes.
Q. So you reviewed that yesterday?
A. I don't remember when I reviewed it most

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recently, but I'm almost certain that I saw it during my preparation for this deposition.
Q. So there's a draft of this letter that you actually created?
A. That's correct.
MR. KASTER: Bob, do you know if that draft has been produced?
MR. ORTBALS: Yeah, Jim, it was part of the ESI production.
THE REPORTER: I'm sorry. Part of the?
MR. ORTBALS: ESI production.
THE REPORTER: Thank you.
MR. KASTER: Thank you.
MR. ORTBALS: Absolutely.
BY MR. KASTER:
Q. Other than the letter or the word "January" being misspelled, do you recall any other changes?
A. There was an email I think from Theresa Rodino that said that she fixed that spelling of "January" and added the address information, I assume, for Dr. Frankel. I'm not aware of any other changes that were made.
Q. So this language here in the letter on the first page: "The episode sounded like a seizure and

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Mr. Carrillo had subsequently undergone a detailed medical evaluation."
So you wrote that, "sounded like a seizure"?
A. Yes.
Q. And have you told us everything that you remember that made it, in your view, sound like a seizure?
A. I mean, I'd have to go through the information that came in along the way. There were several sources of information. There were Mr. Carrillo's statements directly to Theresa Rodino. There was the medical records from his primary care provider whom he saw two days after the episode. There is what is documented in the cardiology notes, what is documented in the neurology notes, and then what is documented on the intake information when he had his EEG.
So, I mean, those are five different provider documents, if you will, that included information almost certainly provided by Mr. Castillo (sic) with some input from his wife.
Q. I'm going to ask you about this next sentence: "He is reported to have no medical conditions, but he was apparently taking

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Gabapentin 600 milligrams twice per day. There was no clear explanation of why he takes this medication."
Do you see that?
A. Yes.
Q. You write this letter on January 10th of 2018. Was that a true statement on January 10th of 2018?
A. In retrospect, as I've looked at this and prepared for it, there was a reference in the cardiology note, I believe, that said he was taking it for his elbow and elbow-related conditions.
And I think some of the documents mention that he had no chronic active problems other than that elbow problem. And, again, perhaps in context, if -- they were talking about major medical conditions, but by this point I should have known why he was taking that medicine, and so this was a mistake that I made in writing up this report.
Now, it is possible for -- particularly with Gabapentin to take it -- be taking it two years ago for one condition and now taking it for something else. That's a possibility.
I'm not giving you that as an excuse. It is just a reason that we try to get detailed medical

information so we have an explanation. But by this point I probably should have said he's taking Gabapentin for residuals from an old elbow problem.

Q. Because Gabapentin is a well-recognized antiseizure medication, right?

A. As I said before, it is -- I believe it was developed as an antiseizure medication. It is used widely for chronic pain conditions as well.

Q. And if we look back at the Medical Comments History, I'm going to read to you this sentence from December 8, 2017, where the employee answered the question of why he was taking the Gabapentin.

And he says that "I have been taking Gabapentin for over two years since my first elbow surgery. Dr. Llewelyn Williams prescribed it because I had a little numbness after my first surgery on my right elbow."

So it was clear for a month or more that he was taking it for pain in his elbow, right?

A. Yes. I'm not 100 percent sure of the date of the document that I could have learned that from. I've already said it was in the first cardiology record. This was an oversight on my part, and -- and I should have stated it more clearly what that

was for.

Q. So the information provided to Dr. Frankel about the medications that Mr. Carrillo was on and why he was taking the medications that you submitted in your letter to Dr. Frankel included a mistake?

A. This last sentence: "There was no clear explanation of why he takes this medication," that is factually incorrect.

Q. Do you think it's important that the information that you provide to an outside evaluator who is doing the evaluation based solely on your communication and medical records, do you think it's important that that be accurate?

A. Yes, I think that it is important. That's why we give them all the medical records so they can make their own decision, and in his final report he actually addressed why Mr. Carrillo was taking the medication.

So, again, I've said mea culpa three times. And I should have said that differently. I should have put more accurate information in there, but he caught it and made his decision knowing that the Gabapentin was taken for a chronic condition.

Q. Did Dr. Frankel have the Medical Comments History available to him?

A. I don't know. I don't think so, but I don't honestly know if he received that at any other time.

Q. Certainly if he had been taking Gabapentin for antiseizure medication and then stopped, that could be a provoked seizure, right?

MR. ORTBALS: Objection to the form, calls for speculation. You can answer.

THE WITNESS: Dr. Frankel addressed that in his report. He said that since the dosage was low and in the absence of other withdrawal symptoms, he did not think that that explained the cause for the seizure.

BY MR. KASTER:

Q. It's possible that if you're taking antiseizure medication and you stop, that you could have a provoked seizure, right?

MR. ORTBALS: Objection to form.

THE WITNESS: It is possible that if you're taking antiseizure medication and stop it, you can have a seizure. Again, Dr. Frankel addressed that in his report in this case, specific to this case.

BY MR. KASTER:

Q. I'm going to ask you this: Now, I've

looked at these reports of Dr. Aguilar's, and I don't think we need to go through them line by line, but I saw one single reference to memory problems, for memory issues following the loss-of-consciousness event.

You point those out specifically on page 2 of 4 of your letter. Do you see what I have up here?

A. Are you talking about the sentence that starts with "Mr. Carrillo has reported"?

Q. Correct.

A. Those are taken from Dr. Aguilar's notes.

Q. "Headaches," the headaches had actually resolved by the time Dr. Aguilar saw Mr. Carrillo the second time, right?

A. I --

MR. ORTBALS: Objection.

THE WITNESS: I'm sorry. Go ahead.

MR. ORTBALS: You can go ahead and answer, Doctor.

THE WITNESS: Okay. I don't think they were resolved by the second one. They were resolved by the last time Dr. Aguilar saw him. I mean, it took several months.

BY MR. KASTER:

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Q. There's one -- I saw one reference in the reports of Dr. Aguilar to memory problems or issues.
Do you have any more specifics about that?
A. The things that I wrote here are, as I mentioned, taken from Dr. Aguilar's notes. Right now, off the top of my head, I can't remember if that was mentioned in any other provider's notes or not.
Q. I mean, there's short-term memory, long-term memory, there's "I can't remember where my car was parked."
There's all kinds of memory issues, right?
A. Well, it's true. I mean, we're talking about cognitive function here, and there can be different aspects of that, different types, different severities and things like that.
So, I mean, this -- Dr. Aguilar, as I've already said, wrote very detailed notes, and I think he was just trying to be inclusive of the -- my term now -- the riddle he was trying to solve here of coming up with what had happened to Mr. Carrillo.
Q. Do you have any more specifics on the so-called "memory problems" of Mr. Carrillo?
A. I don't have them memorized, no. Well, excuse me. He talked about, I think, remembering

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passwords for accounts or computers or something like that. It is spelled out somewhere in just, like, one sentence about the types of memory problems that he reported that day.
Q. Do you have problems remembering your passwords for different computer programs and entries into your bank account or your credit card or things like that? Does that come up from time to time?
MR. ORTBALS: Objection to form. You can answer.
THE WITNESS: It's a longer answer than you want here. My wife does all our banking and paying our credit cards and things like that. I don't even have accounts that -- for electronic paying and things like that. She manages our household well. Have I lost the passwords? Sure, and that's just because I'm not very good with computers at all.
BY MR. KASTER:
Q. I mean, I have problems remembering my password for this account or that account. In fact, we have a repository for passwords just so you can get your passwords for different things because you have one for Apple, you have one for this, you have

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one for that.
You've had problems remembering your passwords from time to time, right?
MR. ORTBALS: Objection to form.
THE WITNESS: Of the -- of the passwords I need to function on a day-to-day basis, I remember them. When I haven't used my Yahoo account for a year, I might not get it right. And you know what, when I do that, I go to my wife and ask her "What's my Yahoo account password?"
BY MR. KASTER:
Q. And she remembers?
A. She remembers because she's very responsible, and she has it on her cell phone and I'm sure some other place.
Q. Was this letter that you wrote the last time you touched this case?
A. Well, actually not, because we looked at an email later, I think it was from early February, where Deb Gengler told me, "Well, go ahead and write the letter," and I said "Well, I've written it already, and it's" -- you know, "it's pretty much ready to go." We looked at the email just a few minutes ago. So I did touch the case afterwards in that sense. I think -- I think that was the last

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time I was involved in the case.
Q. There was some reference to Mr. Carrillo going to Mayo Clinic. Were you waiting on that evaluation to make a final determination?
A. Well, actually, if you look at the notes, I wrote this letter -- excuse me. I authored this letter on January 10th, and he saw Dr. Carrillo (sic) I believe on January 25th, and -- I think that's the date. I'm not 100 percent sure. And that's when he said he was going to the Mayo Clinic.
So at that point that kind of put this process of the independent neurology review on hold because it would give him time to go to the Mayo Clinic and submit the records.
And then he told, I believe it was Bridgette Ziemer, that he wasn't going to go. It was too far away and too expensive. And so that's when we went forward with the independent file review.
Q. And Mr. Carrillo was no longer covered under his employer's insurance, right?
A. I don't know about his insurance benefits. We do a fair amount of information in -- or work in Health and Medical Services to try to help them

maintain their medical leave of absence so that they stay employed. And, secondly, to help them with submission of medical documentation to keep their insurance current.

My understanding was he would have still had insurance by this time, but, again, that's not my end of things.

Q. Did you see in the Medical Comments History that Mr. Carrillo did not, in fact, have insurance and was having trouble having his family seen by --

A. I --

Q. -- service providers? Did you notice that?

MR. ORTBALS: Objection to form, but you can answer.

THE WITNESS: Sorry. I didn't mean to speak over you, Mr. Kaster.

I saw a note that he was concerned about making sure his insurance was in place. One of his children had a medical problem or something like that. So he had reached out to Bridgette to make sure that the insurance forms were completed. That's probably as much as I know about that.

MR. KASTER: All right. Thank you. I don't have any further questions for you, Doctor.

THE WITNESS: Okay.

MR. ORTBALS: No questions. Thank you.

(WHEREUPON, the deposition of DR. JOHN CHARBONNEAU was concluded at 2:04 p.m.)

***

REPORTER'S CERTIFICATE

STATE OF MINNESOTA)
)SS.
COUNTY OF HENNEPIN)

I hereby certify that I reported the remote deposition of DR. JOHN CHARBONNEAU on November 18, 2021, via Veritext Virtual Videoconference, and that the witness was by me first duly sworn to tell the whole truth;

That the testimony was transcribed by me and is a true record of the testimony of the witness;

That the cost of the original has been charged to the party who noticed the deposition, and that all parties who ordered copies have been charged at the same rate for such copies;

That I am not a relative or employee or attorney or counsel of any of the parties, or a relative or employee of such attorney or counsel;

That I am not financially interested in the action and have no contract with the parties, attorneys, or persons with an interest in the action that affects or has a substantial tendency to affect my impartiality;

That the right to read and sign the deposition by the witness was not waived.

WITNESS MY HAND AND SEAL this 24th day of November, 2021.

Jayne M. Seward
Notary Public, Hennepin County, Minnesota
My commission expires January 31, 2025

Veritext Legal Solutions
1100 Superior Ave
Suite 1820
Cleveland, Ohio 44114
Phone: 216-523-1313

November 29, 2021

To: Mr. Ortbals

Case Name: Carrillo, Joseph v. Union Pacific Railroad Company

Veritext Reference Number: 4889286

Witness: Dr. John Charbonneau Deposition Date: 11/18/2021

Dear Sir/Madam:

Enclosed please find a deposition transcript. Please have the witness review the transcript and note any changes or corrections on the included errata sheet, indicating the page, line number, change, and the reason for the change. Have the witness' signature notarized and forward the completed page(s) back to us at the Production address shown above, or email to production-midwest@veritext.com.

If the errata is not returned within thirty days of your receipt of this letter, the reading and signing will be deemed waived.

Sincerely,
Production Department

NO NOTARY REQUIRED IN CA

DEPOSITION REVIEW
CERTIFICATION OF WITNESS

ASSIGNMENT REFERENCE NO: 4889286
CASE NAME: Carrillo, Joseph v. Union Pacific Railroad Company
DATE OF DEPOSITION: 11/18/2021
WITNESS' NAME: Dr. John Charbonneau
In accordance with the Rules of Civil Procedure, I have read the entire transcript of my testimony or it has been read to me.
I have made no changes to the testimony as transcribed by the court reporter.

_____ _____
Date Dr. John Charbonneau

Sworn to and subscribed before me, a Notary Public in and for the State and County, the referenced witness did personally appear and acknowledge that:

They have read the transcript;
They signed the foregoing Sworn Statement; and
Their execution of this Statement is of their free act and deed.

I have affixed my name and official seal

this _____ day of_____, 20____.

_____
Notary Public
_____
Commission Expiration Date

DEPOSITION REVIEW
CERTIFICATION OF WITNESS

ASSIGNMENT REFERENCE NO: 4889286
CASE NAME: Carrillo, Joseph v. Union Pacific Railroad Company
DATE OF DEPOSITION: 11/18/2021
WITNESS' NAME: Dr. John Charbonneau
In accordance with the Rules of Civil Procedure, I have read the entire transcript of my testimony or it has been read to me.
I have listed my changes on the attached Errata Sheet, listing page and line numbers as well as the reason(s) for the change(s).
I request that these changes be entered as part of the record of my testimony.

I have executed the Errata Sheet, as well as this Certificate, and request and authorize that both be appended to the transcript of my testimony and be incorporated therein.

_____ _____
Date Dr. John Charbonneau

Sworn to and subscribed before me, a Notary Public in and for the State and County, the referenced witness did personally appear and acknowledge that:
They have read the transcript;
They have listed all of their corrections in the appended Errata Sheet;
They signed the foregoing Sworn Statement; and
Their execution of this Statement is of their free act and deed.
I have affixed my name and official seal
this _____ day of_____, 20____.

_____
Notary Public

_____
Commission Expiration Date

ERRATA SHEET
VERITEXT LEGAL SOLUTIONS MIDWEST
ASSIGNMENT NO: 4889286
PAGE/LINE(S) / CHANGE /REASON
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_____ _____
Date Dr. John Charbonneau
SUBSCRIBED AND SWORN TO BEFORE ME THIS _____
DAY OF _____, 20_____ .

_____
Notary Public

_____
Commission Expiration Date

Union Pacific Railroad
Health and Medical Services

Exhibit GG

December 01, 2017

Joseph A. Carrillo
3013 Zacatecas Ct
Las Cruces, NM 88012

Employee ID: 00457172
Employee Position: Electrician

Dear **Joseph A. Carrillo**:

Union Pacific Health & Medical Services (HMS) has been notified of your request for time off due to a medical reason. Based on the information reviewed:

[x] A Medical Leave of Absence is recommended for the following dates:
July 01, 2017 - January 31, 2018

In accordance with Union Pacific Railroad Medical Rules, you will require a Fitness-For-Duty (FFD) review **prior** to your return to work. This involves a review by Health & Medical Services of medical information **related to your absence**. Please provide the following information at least ten (10) business days prior to your anticipated return to work date **OR** to extend your Medical Leave of Absence which expires on the above noted date.

[x] Copy of the ETT (exercise treadmill test? full report.

[x] Copy of **Neurologist's clinic notes** (also known as office notes or progress notes) from the office visits. ***The full Neurology evaluation.***

[x] Please have your provider who prescribed the Gabapentin to document why you are now taking Gabapentin. Including the medical diagnosis, dosage, and efficacy.

The requested medical records may be submitted to **Health & Medical Services confidential fax line at 402-501-0067. Please use the enclosed bar coded cover sheet when faxing your information.**

If you are having difficulty in obtaining the medical records in the requested time frame, please contact your FFD nurse at number listed below. Following these steps will be helpful in ensuring that the medical records required are complete so the FFD review can take place as efficiently as possible. You and your manager will be notified when you have been medically

cleared to return to work by Health & Medical Services.

If at any time you have questions regarding the Return to Work process, please contact your FFD nurse at Health & Medical Services at the number listed below.

Sincerely,

Bridgette Ziemer
Fitness For Duty Nurse
Health & Medical Services
Union Pacific Railroad
1400 Douglas Street - STOP 0350
Omaha, NE 68179
Phone: 877-275-8747
Fax: 402-501-0067
Email: BZIEMER@UP.COM

CC:

The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of an individual or family member of the individual, except as specifically allowed by this law. To comply with this law, we are asking that you not provide any genetic information when responding to this request for medical information. "Genetic information," as defined by GINA, includes an individual's family medical history, the results of an individual's or family member's genetic tests, the fact that an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services.

Union Pacific Railroad
Health and Medical Services

Exhibit HH

January 17, 2018

Joseph A. Carrillo
3013 Zacatecas Ct
Las Cruces, NM 88012

Employee ID: 00457172
Employee Position: Electrician

Dear **Joseph A. Carrillo**:

Union Pacific Health & Medical Services (HMS) has been notified of your request for time off due to a medical reason. Based on the information reviewed:

[x] A Medical Leave of Absence is recommended for the following dates:
July 01, 2017 - March 01, 2018

Please submit the following medical documents:

[x] Copy of Follow Up Neurology visit and the Mayo Clinic evaluation reports when they become available

The requested medical records may be submitted to **Health & Medical Services confidential fax line at 402-501-0067. Please use the enclosed bar coded cover sheet when faxing your information.**

If you are having difficulty in obtaining the medical records in the requested time frame, please contact your FFD nurse at number listed below. Following these steps will be helpful in ensuring that the medical records required are complete so the FFD review can take place as efficiently as possible. You and your manager will be notified when you have been medically cleared to return to work by Health & Medical Services.

If at any time you have questions regarding the Return to Work process, please contact your FFD nurse at Health & Medical Services at the number listed below.

Sincerely,

Union Pacific Railroad
Health and Medical Services

Bridgette Ziemer
Fitness For Duty Nurse
Health & Medical Services
Union Pacific Railroad
1400 Douglas Street - STOP 0350
Omaha, NE 68179
Phone: 877-275-8747
Fax: 402-501-0067
Email: BZIEMER@UP.COM

CC:

The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of an individual or family member of the individual, except as specifically allowed by this law. To comply with this law, we are asking that you not provide any genetic information when responding to this request for medical information. "Genetic information," as defined by GINA, includes an individual's family medical history, the results of an individual's or family member's genetic tests, the fact that an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services.

Diplomate American Board of Neurology
Mario R. Aguilar M.D., P.C.
1240 S. Telshor Blvd, Suite C. Las Cruces, NM 88011-4731
Phone # (575) 522-1212 / Fax # (575) 522-2898

Exhibit II

NEUROLOGY FOLLOW-UP

PATIENT: **Joseph Carrillo**
GENDER: **Male**
DOB:
AGE: **31y**

PRIMARY CARE PROVIDER: **Saenz, Mia NP**

DATE OF VISIT: **01/25/2018**

CHIEF COMPLAINT
Episode of unresponsiveness.
Paresthesia in the right arm, torso and right leg.
Headache.

SUBJECTIVE
I reviewed the symptoms outlined on his 08/07/2017 visit.

Patient provided the history:

Episode of unresponsiveness.

Patient stated having experienced an episode of unresponsiveness at the end of June 2017.
He denied previous episodes of unresponsiveness or recurrences.

Description: See H&P.

Headaches.
Headaches have resolved for the most part.

Hypersensitivity:

It has been resolving. The only area, which has been affected is in the back of his thigh.

He denied new neurologic symptoms.

HISTORY OF PRESENT ILLNESS
DATE OF INITIAL CONSULTATION: 08/07/2017

Patient provided the history:

Onset
Patient stated having experienced an episode of unresponsiveness at the end of June 2017.
He denied previous episodes of unresponsiveness or recurrences.

Description
He woke up at 4:45 am and was getting ready to go to work when he experienced the episode of unresponsiveness. There was no warning.
He recalled brushing his teeth next he is in the bathroom on the floor being helped by his girlfriend.

He reported being told the his breathing was slow and was snoring.
His arms were initially shaking.
His body became limp afterwards.
There was no bowel or bladder incontinence.
There was tongue biting across his tongue worse in the right side.

The duration of the episode is unknown. His girlfriend heard him snoring and went to check on him.

He woke up not knowing what had happened.

He recalled experiencing skin hypersensitivity to light touch in the right side of the body and numbness in the back of his right thigh.

He had a headache when he woke up.

He felt nauseated but he did not vomit.

He went to see Dr. Saenz that day and underwent blood tests.

There was no specific treatment.

Currently.
Headaches. He never had similar headaches. The headaches have been constant since the episode of unresponsiveness. The headaches have been located in the frontal region, left temple and eyes. He described the pain as throbbing and at times severe. He has taken ibuprofen, which does not help.

Hypersensitivity: Patient has been experiencing discomfort (hypersensitivity of skin to light touch) in the right arm, right abdomen, chest and leg (right side).

Tiredness. He feels tired in the mornings.

He has had lower back pain: The pain has recurred at times. The pain has been localized to the lower back. It does not radiate to the legs.

He also described morning stiffness.

He reported having had difficulty recalling phone numbers and passwords.

He reported anxiety episodes since the episode.

He had anxiety before.

He did not know if he injured his head at the time of unresponsiveness. There were no head lumps or lacerations.

He reported being a diesel electrician and works on locomotives.
He is not working at this time.

He denied double vision, blindness, speech or swallowing problems.
He denied focal weakness. He denied sphincteric dysfunction.

He has taken Gabapentin for years for paresthesias (numbness and tingling) in his right fingers.

MEDICAL / SURGICAL & HOSPITALIZATION HISTORY

Patient denies any new medical problems from previous visit. Patient denies any new surgeries from previous visit. Patient denies any hospitalizations since previous visit.

REVIEW OF SYSTEMS

Cardiovascular System Reviewed
Patient denies Chest Pain. Patient denies Palpitations. Patient denies Dyspnea on Exertion.

Constitutional System Reviewed
Patient denies Weight loss. Patient denies Fever. Patient denies Chills.

PAST MEDICAL HISTORY

He has had right elbow surgery twice. He reported having had a fatty liver.

PAST SURGICAL HISTORY

He has had right elbow surgery twice.

MEDICATIONS

No changes
Active Medications
• gabapentin 600 mg tablet. Take 2 tablets by mouth at bedtime QHS. Do not substitute.

ALLERGIES

No changes
• No Known Allergies (Mild): Recorded on 08/07/2017. Reactions: None noted.

OBJECTIVE

Vital Signs
Added vitals entry: Measurement date: 2018-01-25 08:41 Weight: 167.0 lbs Height: 5 ft 6.0 in BMI: 27.0
Heart rate: 60 bpm Blood pressure: 120 / 70 mmHg Respiration Rate: 20 breaths per minute

General
The patient is well developed. The patient is well nourished. The patient is in no acute distress. The patient's head shows no recent trauma. There is no proptosis in the right eye. There is no proptosis in the left eye.

The patient's neck is supple without any adenopathies or bruits. The patient's lungs are clear. The patient's heart is regular.

Mental Status
Patient is awake. Patient is alert. Patient is cooperative. Patient is attentive. Patient is appropriate. The patient's speech is unremarkable.

Cranial Nerves
Cranial Nerve II - Optic
The patient's right fields are full. The patient's left fields are full.

Cranial Nerve III - Oculomotor
The patient's right pupil is 2 mm in size. The patient's left pupil is 2 mm in size. The patient's right pupil is reactive to light. The patient's left pupil is reactive to light. There is no ptosis in the right eye. There is no ptosis in the left eye. The patient's right eye shows normal adduction. The patient's left eye shows normal adduction. The patient's right eye shows normal upward movement. The patient's left eye shows normal upward movement. The patient's right eye shows normal downward movement. The patient's left eye shows normal downward movement.

Cranial Nerve IV - Trochlear
The patient's right eye shows normal intorsion. The patient's left eye shows normal intorsion.

Cranial Nerve VI - Abducens
The patient's right eye shows normal abduction. The patient's left eye shows normal abduction.

Cranial Nerve VII - Facial
There is no weakness of the right frontalis. There is no weakness of the left frontalis. There is no weakness of the right orbicularis oculi. There is no weakness of the left orbicularis oculi. There is no weakness of the right orbicularis oris. There is no weakness of the left orbicularis oris.

Cranial Nerve IX - Glossopharyngeal
The patient's palatal motion is normal.

Cranial Nerve XII - Hypoglossal
The patient's tongue movements are normal. The patient's tongue shows no atrophy. The patient's tongue shows no fasciculations.

Motor
There is no Weakness in the Right and Left Thumb, Index Finger, Middle Finger, Ring Finger, or Little Finger. There is no Hand Grip Weakness. There is no Wrist Weakness. There is no Elbow Weakness. There is no Shoulder Weakness. There is no weakness in the Right or Left Toe. There is no weakness in the Right or Left Foot. There is no weakness in the Right or Left Knee. There is no weakness in the Right or Left Hip. There is no cogwheeling rigidity in the patient's Wrists, Arms, or Legs. There is no resting tremor in the patient's Lips or Hands. There is No Postural Tremor in the patient's Hands. There is no Bradykinesia. There are no Dyskinesias of the Head, Arms, Hands, or Legs.

Cerebellar

The patient's right finger-to-nose test is normal. The patient's left finger-to-nose test is normal. The patient's right rapid alternating movements of fingers are normal. The patient's left rapid alternating movements of fingers are normal.

Station & Gait
The patient gets out of a chair and onto the examination table well. The patient is able to perform Romberg's maneuver well.

STUDIES

Blood Tests
07.01.2017-8:18A at Fletcher Flora Lab:
CMP: Glucose 116 H (65-100).
ALT: 138 H (10-40). AST 78 H (9-44).
CBC and TSH: Unremarkable.
Lipid panel: cholesterol 223 H (20-200), triglycerides 208 H (0-150), HDL 33 L (40-60). Ma.

10.24.2017-1231 at MMC:
B12, RPR, ANA, IFE, Anti-Hu antibodies and ESR were unremarkable. Ma.

Neuro Imaging
PATIENT: Joseph Carrillo
DOB: 5/23/1986
MRN: 100000552974
PHYSICIAN: Mario Aguilar, MD
EXAM DATE: 8/16/2017
MRI, Brain c/s Contrast Brain :
HISTORY: Headaches. Weakness. Memory loss.
REFERENCE : None available in PACS.
TECHNIQUE: Multi-planar and multi-sequential MR images of the brain were performed. Without and with IV contrast, Magnevist contrast 15 cc. No contrast reaction reported.
FINDINGS:
BRAIN:
Cerebrum: No intracranial hemorrhage, cerebral edema, diffusion restriction, or mass lesion.
Basal Ganglia: Normal caudate nuclei and lentiform nuclei.
Thalami: Normal.
Cerebellum: No abnormality.
Brain stem: No suspicious lesion.
Ventricles and CSF spaces:
Cortical sulci and basilar cisterns are unremarkable.
Ventricles are normal in size.
Expected flow-voids are patent.
Sella and Pituitary gland: Normal.
Orbits: Normal.
CALVARIUM:
No significant extracranial soft tissue swelling.
SINUSES and MASTOID AIR CELLS and etc.:

Visualized paranasal sinuses are clear.
Mastoid air cells are clear.
Post enhancement:
Images obtained after the contrast injection show no enhancing abnormalities.
IMPRESSION:
1. Normal MRI examination of the brain.
2. No abnormal enhancement.

Dictation site: SVIPAC-TCSV102R

This document has been reviewed and Signed by: Benjamin Wang on 8/16/2017 11:59 AM

10.13.2017 MRI cervical spine without contrast at TIC showed:
IMPRESSION:
No demyelinating lesions or myelomalacia. Mild disc bulge at C5-6 with no canal stenosis, cord compression or nerve root impingement. Ma.

10.13.2017 MRI thoracic spine without contrast at TIC showed:
IMPRESSION:
Unremarkable non-contrast enhanced MRI of the thoracic spine. Ma.

Electrophysiological Studies
08.22.2017 at MMC:
EEG: Normal awake EEG as per Dr. Aguilar. Ma.

CLINICAL IMPRESSION
In essence, this is a 31-year-old male with an episode of unresponsiveness in the latter part of June 2017.

He denied recurrences:
MRI brain and EEG were unremarkable.

Headaches:
Resolved.

Hypersensitivity of the skin in right arm, chest, abdomen and leg, etc. The cause is undetermined. He has been doing well. He sees Dr. Williams regarding this issue.

I previously discussed work-up and significance. I discussed the results of his cervical and thoracic spine MRIs and blood tests. I discussed ongoing symptomatic treatment, other options, referral to university center, etc.

He apparently has been diagnosed with fatty liver in the past.

DIFFERENTIAL DIAGNOSIS
Episode of unresponsiveness:
Single unprovoked seizure.
Single provoked seizure.

Syncope.
Stroke was not demonstrated.
CNS infection.
Metabolic encephalopathy.
Others.

Headaches:
Intracranial mass lesion was not demonstrated.

Hypersensitivity of the skin in right arm, chest, abdomen and leg, etc.
Intracranial pathology such as stroke or multiple sclerosis lesion were not demonstrated.
Myelopathy, radiculopathy, polyneuropathy, etc.

RECOMMENDATIONS

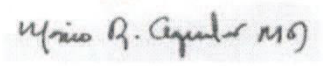
1. Patient will continue care with Ms. Saenz and Dr. Williams.

2. Please refer Mr. Carrillo back here if needed.

The patient and/or all parties present voiced understanding and agreement.

Thank you very much for allowing me to participate in this patient's care.

Sincerely yours,



Mario R. Aguilar M.D., P.C.

*Electronically Signed on 01/26/2018 10:20:10.
Electronically Faxed to M. Saenz 647-1565 on 01/26/2018 at 10:24 am

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

Exhibit JJ

Joseph Carrillo,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 3:21-cv-00026-FM
	)	
Union Pacific Railroad Co.,	)	
	)	
Defendant.	)	

DEPOSITION OF DR. MARIO R. AGUILAR

February 11, 2022
9:00 a.m.

Taken via Zoom Videoconference originating at:
The Offices of Dr. Mario Aguilar
1240 South Telshor Boulevard
Las Cruces, New Mexico 88011

Reported by: Sandra M. Mierop, FAPR, CRR, CCP, CBC

APPEARANCES

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Also Present:
Steve Cummings, Videographer
Sherick Francois, Legal Assistant
Grant Franks, Concierge

INDEX

DR. MARIO R. AGUILAR FEBRUARY 11, 2022

EXHIBITS

PROCEEDINGS

THE VIDEOGRAPHER: We are now on the record, today is February the 11th, 2022. The time is 9:12 a.m.

This is the recorded deposition of Dr. Mario Aguilar being taken remotely using the video conference platform Zoom.

Today's deposition is in regard to the matter of case No. 3:21-cv-00026-FM captioned Joseph Carrillo versus Union Pacific Railroad Company filed in the United States District Court, Western District of Texas, El Paso Division.

Counsel, will you please identify yourselves for the record?

MS. de LEON: This is Lara de Leon. I'm here on behalf of Defendant Union Pacific Railroad.

MR. KASTER: And Jim Kaster here on behalf of the Plaintiff.

MR. ROGERS: Lee Rogers, I'm personal counsel for Dr. Aguilar.

THE VIDEOGRAPHER: At this time, the doctor may be sworn in by the court reporter.

DR. MARIO R. AGUILAR,
being duly sworn, testified as follows:

EXAMINATION

Q. (BY MS. de LEON) Good morning, Dr. Aguilar.
A. Good morning.
Q. I introduced myself briefly on the record, but my name is Lara de Leon. I am here as an attorney for Union Pacific Railroad, and we are here today to take your deposition in -- in connection with the lawsuit filed by Mr. Joseph Carrillo.

Have you ever had your deposition taken before?
A. No.
Q. All right. Probably a little bit daunting. So, I'd like to just go through a couple of ground rules that will hopefully make our time together go a little more smoothly. First off, do you understand, sir, that you've been placed under oath, which means that the testimony you give today is being given under penalty of perjury?
A. Yes.
Q. Is there any reason today why you think you could not give complete and truthful testimony?

A. No.
Q. And even though we're on Zoom, which is a little bit informal, do you understand, sir, that your testimony today will have the same force and effect as if it were given in front of a judge or a jury?
A. Yes.
Q. Now, we have a court reporter here today who's going to be taking down what I say, what you say, and what the other attorneys present are going to say. And it's really important for her and for us in this case that we try to take turns responding. And by that I mean, if you could please just wait for me to ask -- ask my question before you give me your answer.
Does that make sense?
A. Yes.
Q. Okay. And, at the same time, if I could ask you to please remember to respond verbally to a question of mine with a yes or a no, or the substance of the question. The court reporter can't get down head shakes or head nods or uh-huhs or things of that nature. All right?

A. Yes.
Q. Okay. And if you don't understand a question that I'm asking you, will you please ask me to rephrase it?
A. Yes.
Q. Okay. I promise you my feelings won't get hurt. It happens almost every time. But it's real important for us to be able to be certain that you understood all my questions today. All right?
A. Yes.
Q. All right. Now, sir, do you have anything in front of you in terms of documents that you plan on relying on for your deposition today?
A. Yes.
Q. Okay. And what is it that you have with you?
A. I have Mr. Joseph Carrillo's records in front of me.
Q. Okay. And -- and do you know if your office produced those records to -- to my law firm in connection with this lawsuit?
A. Yes.
Q. Okay. And is that about 64 pages of

records?
A. I don't know the number of pages. Just the records were sent to the attorneys.
Q. Okay. All right. Well, what I'm going to ask you to do, and we can coordinate this through your counsel if we need to, just to make sure that we have everything is perhaps after the deposition have you send us a copy of what you have in front of you.
But I'm also going to ask you, sir, don't -- if you -- don't look at the records until I know you're looking at the records. I'm actually going to show you exhibits today, and I'd like you to focus on the exhibits that I'm showing to you on the computer. And if there's something else that you need to look at, I'm just going to ask you to please let me know ahead of time so the record can reflect what it is you're looking at.
Does that make sense?
A. So, you're asking me not to look at my records at this point. You want me to look at the demonstration on the screen?
Q. Yes, yes.

A. The document on the screen?
Q. Yes. Yes. And if you need to look at something else, let me know so we can make sure we all are aware of what it is you're looking at to refresh your memory. Okay?
A. Yes.
Q. Okay. Thank you.
All right. So, Dr. Aguilar, I just want to go through some background medica- -- information first.
You are -- you have a -- a medical degree, correct? An M.D.?
A. Yes.
Q. And where did you get your M.D. from?
A. Mexico City.
Q. Do you know the name of the university where you obtained your medical degree?
A. Universidad Nacional Autonoma de Mexico.
Q. What year did you obtain your M.D.?
A. I went from '68 to '71 to the university. Then you're required to do an internship, one year. And then social service, one year. And then you become an M.D. in Mexico.

Q. So, by my math, then, you would have attained your M.D. in 1973; is that correct?
A. So, '68 to '71, '71 to '72, '72-'73. That's when I finished. Yes.
Q. Thank you. Did you do any residencies after you attained your M.D.?
A. After that I moved to the States and did internal medicine for three years. After that, I did neurology for three years. And since then, I -- I've been practicing here in Las Cruces.
Q. All right. And did you do your residency in internal medicine at St. Luke's Hospital?
A. Yes.
Q. Where is St. Luke's Hospital located?
A. Pennsylvania. Bethlehem, Pennsylvania.
Q. Am I correct, sir, that you did your residency in neurology at the University of Arizona?
A. Yes.
Q. Where -- which location?
A. Tucson, Arizona.
Q. And you indicated after you finished

your residency in neurology, you began your current practice in Las Cruces, New Mexico?
A. Yes.
Q. Is -- have you done any other -- have you associated with any other medical practices other than your current medical practice since you began?
A. No.
Q. Do you have any affiliations with any hospitals or medical centers?
A. There are two hospitals here in Las Cruces. I'm courtesy staff at this point.
Q. And what hospitals are those?
A. Memorial Medical Center, Mountain View Regional Medical Center.
Q. Now, as a neurologist, am I correct that you are a specialist who treats diseases or conditions of the brain and nervous system?
A. Yes.
Q. And do some of these neurological conditions that you diagnose and treat include epilepsy and seizures and strokes?
A. Yes.
Q. And do you have any Board certifications?

A. I'm Board-certified in neurology.
Q. Is that by the American Board of Psychiatry and Neurology?
A. Yes.
Q. And you have medical licenses still in Pennsylvania, Arizona and New Mexico; is that right?
A. At this point, just in New Mexico.
Q. And you're current on all of your continuing legal -- I'm sorry, continuing medical education?
A. Yes.
Q. Okay. All right. So, let's talk about Mr. Castillo just a little bit. Now, you first treated Mr. Castillo in around June of 2016; is that correct?
A. Without looking at the records, it sounds like that's correct.
Q. Okay. Well, let me just go --
THE REPORTER: Excuse me. Ms. de Leon, is it Castillo or Carrillo?
MS. de LEON: I'm so sorry. It's Carrillo -- Carrillo. I'm so sorry. That's my mental lapse. Mr. Carrillo.
Q. (BY MS. de LEON) So let me ask that

question again. Dr. Aguilar, did you first treat a Mr. Carrillo in around June of 2016?
A. Yes.
Q. And was that in connection with some elbow pain he was experiencing?
A. Yes.
Q. And then it looks like after that incident you saw him again in August of 2017?
A. It sounds like that's the correct date.
Q. All right. Sure. Let me go ahead and show you what has previously been marked as Exhibit No. 13 in this lawsuit. So just give me one moment. The first one is always a little tricky. All right. You should have Exhibit No. 13 available for you to look at right now.
THE CONCIERGE: Mr. Aguilar, do you see the folder marked Exhibits?
THE WITNESS: It says folder's empty.
THE CONCIERGE: Double click on that -- on the folder itself for me.
THE WITNESS: It doesn't open.
THE CONCIERGE: Excuse me. So on the left side of your screen where it says marked exhibits,

could you double-click on that folder?
THE WITNESS: Folder -- I see Exhibit 0001.
THE CONCIERGE: Perfect.
A. This is a neurology consultation.
Q. (BY MS. de LEON) Yes, good. So you're able to see it now?
A. Yes.
MS. de LEON: All right. And I'll just state for purposes of our record, it might show as 1 -- Exhibit 1 in connection with your deposition, but it -- it's previously been marked as Exhibit No.13 in connection with this lawsuit, so that's what we're referring to, and it's Bates EPCARRILLO381 to 387.
Q. (BY MS. de LEON) All right. Now, Dr. Aguilar, this document, is this a -- a type of document that you usually create following an appointment or a consult you have with a patient?
A. Yes.
Q. Okay. And this document reflects a neurology consultation that you had with Joseph Carrillo on August 7th, 2017; is that correct?
A. Yes.

Q. Okay. Now, is this the first visit that you had with Mr. Carrillo regarding an episode where he lost consciousness?
A. Yes.
Q. Okay. Now, do you -- do you fill out or do you complete this consultation record yourself?
A. I create this form, and then it's edited by my secretary.
Q. All right. So, according to this form, Mr. Carrillo presented with a complaint of having an episode of unresponsiveness and headaches and paresthesia in the right arm, torso and right leg; is that right?
A. Yes.
Q. Okay. Now, there's a history of present illness. Did you obtain that directly from Mr. Carrillo?
A. Yes.
Q. Do you know if he -- or do you recall if anyone else was with him during this visit with you?
A. I don't recall, but I usually write if there's somebody else with a patient. In this case, it says patient provided the history.

Q. Thank you. Did you ever feel that you had any trouble communicating with Mr. Carrillo?
A. No.
Q. Did you believe that he was able to understand you well during your visits?
A. Yes.
Q. Did he ever indicate to you that he did not understand what you were telling him?
A. Not that I recall.
Q. And Mr. Carrillo speaks English; is that correct?
A. Yes.
Q. Thank you. All right. So, from the history of present illness, it appears that Mr. Carrillo said that he had an episode of unresponsiveness at the end of June of 2000 -- 2017; is that right?
A. Yes.
Q. Okay. And you obtained details from him regarding what he recalled from that episode; is that right?
A. Yes.
Q. Did you review any other medical records or documentation relating to this

incident?
A. No. Other than, usually, there is a referral from the primary doctor, other than that, no.
Q. And in the referral, does it provide any background or context for the referral?
A. No. It's a very brief referral. One may say headache. One may say episode of unresponsiveness. It's a brief --
Q. All right.
A. -- correction.
Q. All right. He was referred by, it looks like, Mia Saenz, who is a nurse practitioner; is that correct?
A. Yes.
Q. Okay. All right. So, I would like to just ask you -- we're not going to go through every element of the details you provided, but let me ask you this: When you complete this consultation form, do you write down everything that the patient has told you?
A. The history of present illness, that's where you ask the patient different multiple questions. That's where the patient described a history. So, that's the history of present

illness. And after that, you review systems, different systems. You review past medical history, past surgical history, social history, medications, allergies, family history, and then you examine the patient.
Q. Thank you. And it appears that Mr. Carrillo had reported that he takes Gabapentin due to the paresthesias on his right fingers; is that correct?
A. Medication's Gabapentin, 600, two tablets at night.
Q. And what is Gabapentin typically used for?
A. It's an antiepileptic drug. It also is used for pain of any type, including headaches or nerve pain.
Q. Does it cause drowsiness?
A. Yes, it can cause drowsiness.
Q. Now, if you look on Page 3 of your report, about half way in the middle, you reference "psychiatric system review."
Do you see that?
A. Yes.
Q. And the note here states: Patient reports depression, patient denies suicidal

thoughts, patient reports anxiety; is that correct?
A. Yes.
Q. Why are there braces around patient reports depression and patient reports anxiety?
A. To make it easy to read for -- for me and -- and the referring physician when we send the letter.
Q. Okay. All right. No other reason -- it doesn't mean -- it doesn't refer to how that was reported to you or anything like that?
A. No.
Q. Okay. All right. If we go down then, to the -- Page 6, you note your clinical impressions; is that right?
A. Clinical impression, yes.
Q. Yes. Okay. Let me ask you this: About how long was this initial consultation, if you recall?
A. I usually take an hour to complete and then probably 10-15 minutes to edit my form. So, more than an hour.
Q. Do you keep your -- record your notes shortly after you've had the consult with the patient?

A. Yes. I try to finish my form either at the end of the visit or at the end of the day.
Q. Right. So, going to your clinical impression here, you note, in essence, this is a 31-year-old male with an episode of unresponsiveness in the latter part of June, 2017. He has been experiencing headaches, forgetfulness, tiredness, hypersensitivity of the skin and right arm, chest, abdomen and leg, et cetera. The cause for his multiple symptoms at this time is undetermined; is that correct?
A. Yes.
Q. Okay. And how is it that you had -- came up with the impression that the cause was undetermined?
A. At that point, I have my history of present illness, and I review systems and the examination. At that time, I don't know the cause for the multiple symptoms based on that history and examination.
Q. Did you have an impression about what Mr. Carrillo actually suffered? You know, it says here "episode of unresponsiveness," but what does that mean?

A. It means you lose consciousness as opposed to being awake. Sometimes if you lose consciousness and you're standing, you fall.
Q. All right. So, it was a loss of consciousness. Does that mean that he had a seizure?
A. They're different terms that you can use. When somebody complains of an episode of passing out, we can call it "a spell." We can call it "a seizure." We can call it "syncope." Just a term to communicate that the patient lost consciousness.
Q. All right. So, is there a difference between the term "spell," "seizure" or "syncope"?
A. So those terms only means that you pass out.
Q. Okay. They don't have any other medical significance? You know, why would you use one term over another?
A. Sometimes if you feel that the episode is clear-cut -- an epileptic seizure, then you would call it an epileptic seizure.
Sometimes, if you feel that the patient had a stroke, you would call it a

stroke. And it still is a clinical impression.
Q. All right. And so -- thank you for that.
Now, with a differential diagnosis section, what does that section address?
A. So, these are possibility -- diagnostic possibilities that go through your mind trying to figure out what was the cause for the events or his symptoms. So, you mention different diagnostic possibilities, single unprovoked seizure, syncope, TIA or a stroke, CNS infection, metabolic encephalopathy, others.
Q. And -- and those are the diagnoses that you provided on this particular consult, correct?
A. That -- that's the differential diagnosis. Things you keep in your mind that potentially would have caused the symptoms that he was complaining of.
Q. Did you have any doubt that Mr. Carrillo actually did have a seizure or lose consciousness in June of 2017?
MR. KASTER: I object to the question as

vague and confusing, and multiple.
Q. (BY MS. de LEON) Dr. Aguilar, did you understand that question or would you like me to rephrase it?
A. Can you repeat it?
Q. Sure. Did you have any reason to question Mr. Carrillo's report that he lost consciousness in June of 2017?
A. From the encounter that I had with him, I didn't have any questions, the validity of his complaints.
Q. And then the differential diagnosis section just refers to, if I'm correct, the possible causes of that particular episode, correct?
A. Yes.
Q. What is a single unprovoked seizure?
A. Typically, after you do a workup, for instance, you do MRI brain, you don't see a stroke, you don't see a tumor. You do ET, you do blood work, and you don't find the cause. And you say, this patient had an episode of unresponsiveness probably related to one episode or unprovoked seizure.
If you find on the MRI that the

patient had a stroke, then you would say these symptoms the patient is describing are related to the stroke.
Q. All right. So, what does "unprovoked" mean, when we're looking at single unprovoked seizure?
A. Unprovoke, it means we don't find a cause for the event, versus provoked or symptomatic spell or seizure. In that situation, when we do that workup, you find that the patient had a stroke, you find that the patient glucose was low, the sodium was low. So, there's something that explains the episode that would -- that would be provoked. Something caused the event that we can say, yes, we have this test telling us that's the cause.
Q. So, if I understand that, then, a single unprovoked seizure would be a seizure where we can't identify a cause for it? Is that correct?
A. Yes.
Q. Okay. And then the next option or possibility under differential diagnosis is syncope. How is that different, if at all,

from a single, unprovoked seizure?
A. A seizure is related to hyperactivity of neuronal networks in the cerebral cortex. At root, at rock onset and that leads to unresponsiveness.
Syncope, it means that there was a lack of blood flow to the brain, and that caused the episode of passing out.
Q. All right. So, like a different cause, if you will, for the incident of losing consciousness?
A. Yes.
Q. Okay. Are they different -- is there any difference in severity between an unprovoked seizure and a syncope?
A. A syncope is usually brief, lasts less than a minute or a minute -- minute and a half. Patient usually has symptoms before passing out. They may feel light-headed, and maybe sweaty. They may have feeling cold or hot and they have blurred vision, and then they become unresponsive. When they wake up, they usually are able to tell you that they were experiencing symptoms before passing out, so they're aware of what happened, most of the

time.
Versus a seizure, there is no warning, most of the time the patient becomes unresponsive. The seizure lasts two, three minutes, and then there's a period where they're confused, they're -- they don't know what happened. They're very sore and have headaches after the episode. It lasts for hours.
So, based on that history, you try to decide what would be the most likely explanation.
Q. Thank you for that.
Is there any difference in the seriousness of the event between a seizure and a syncope?
A. The majority of the seizures or a large percent of patient with seizures, when you do that workup, you're not going to find the cause.
Now, if you find the cause for the seizure, you might be able to tell what's going to happen to these patients.
In cases of syncope, the most common cause at this age is related to -- it's

like fainting. So it's less significant as far as the outcome.
Q. Okay. What is -- going back to your differential diagnosis -- diagnosis what is "TIA?"
A. That's transient ischemic attack.
Q. Is that a synonym for stroke?
A. TIA means the patient has neurological symptom, such as, an episode of difficulties with speech, one side of the body being paralyzed that lasts less than 24 hours.
A stroke, clinically, the deficit -- neurological deficit lasts more than 24 hours. When you do MRI brain, you are not going are to see a TIA, you're going to see a stroke. TIA doesn't have any markers on MRI or any test we do.
Q. What is CNS infection?
A. That's related to meningitis, encephalitis. An infection in the brain itself, that's encephalitis. Meningitis, that's in the covering of the meninges, the brain. So those are infectious processes.
Q. And what is metabolic enceph- -- encephalopathy?

A. In that category, you have conditions like low glucose causing unresponsiveness, low sodium or high sodium causing unresponsiveness, liver disease, kidney disease, medications, drugs, intoxicational withdrawal. So, those would be the causes -- some of the causes of metabolic encephalopathy.
Q. Thank you. And then on your recommendations, back here, your first one indicates you told Mr. Carrillo not to drive and avoid any other activities in which he could sustain any injuries or could cause injuries to others if a seizure were to reoccur; is that right?
A. Yes.
Q. And you also recommended he's to avoid swimming, taking baths, climbing ladders, open-flame exposure, et cetera, correct?
A. Yes.
Q. Why is it you made that recommendation?
A. You're concerned about recurrences. You're concerned if theres a recurrence. You worry about injuries to the patient, he or himself, or others.

Q. And what did you base that recommendation on?
A. If the patient has an episode of unresponsiveness, and you do -- you're doing the workup, this would be a precaution. You advise the patient to avoid activities where if he were to have recurrence of the episode, he or she can injure he or himself.
Q. What -- the second recommendations were to -- sounds like they were to run some lab work on him? A blood test; is that right?
A. Yes.
Q. Okay. And then you also recommended that he have an MRI with the brain -- of the brain, correct?
A. Yes.
Q. Okay. And that was to identify if there were any -- if he had a stroke; is that right?
A. You're looking for a cause for the spell, including strokes, tumors, et cetera.
Q. And then you recommended an E -- an EEG, correct?
A. Yes.
Q. Okay. And what does an EEG do?

A. The EEG is a test to see -- study brain wave activity. So you put electrodes in the skull and record brain-wave activity.

In patients that have had seizures, between seizures, you may see abnormalities we call "epileptiform discharges."

So you have brain wave activity at a certain frequency, and all of a sudden you see a sharp wave that keeps recurring. So, when you do the EEG in somebody that has -- has had an episode of unresponsiveness, you're trying to see if they're epileptiform discharges. When you see epileptiform discharges, and you feel that the risk for seizures -- recurrence of seizures increases.

Q. Thank you. And it looks like you also recommended that he have a referral to occupational medicine regarding work restrictions, short-term disability, correct?

A. Yes.

Q. Do you know if he did that?

A. I don't know.

Q. Okay. Now, you -- you also had Mr. Carrillo sign a safety guidelines for

seizure patients; is that correct?

A. Is that on the exhibit? I don't see it.

Q. No it's not. Let me go ahead and show you what I'm marking as Exhibit 71.

A. So I can close this one?

Q. You can close that one.

THE CONCIERGE: And, Dr. Aguilar, you do --

THE WITNESS: Yes.

THE CONCIERGE: -- that just by clicking the small arrow in the top left corner.

MR. KASTER: I -- I think it should actually be Exhibit 72.

MS. de LEON: Oh, okay. Thank you.

MR. KASTER: Yeah, you're welcome.

THE WITNESS: Where is the small arrow you said?

THE CONCIERGE: Are you still in the exhibit?

THE WITNESS: Yes.

THE CONCIERGE: So up in the top -- top left corner.

THE WITNESS: Top left --

Q. (BY MS. de LEON) All right. Now --

THE CONCIERGE: It should be just right next to the name Exhibit 0001.

THE WITNESS: Okay, okay. I'm back to the exhibits now.

MS. de LEON: Yeah, for some reason, it wouldn't let me change the stamp. So perhaps we can address that afterwards.

THE CONCIERGE: Certainly.

MS. de LEON: It -- it -- the stamp says 71, but it should be 72.

THE CONCIERGE: And I can change the last -- the name on it right now, if you'd like.

MS. de LEON: That would be fantastic. Thank you.

And for the record, this is Bates-stamped EPCARRILLO2596.

Q. (BY MS. de LEON) Do you have the document in front of you, Dr. Aguilar?

A. Exhibit --

THE CONCIERGE: Dr. Aguilar, just check double click on that marked exhibits, again, like you did last time.

THE WITNESS: Okay.

THE CONCIERGE: It should pop up.

THE WITNESS: So it would be the second?

THE CONCIERGE: Yes, sir.

THE WITNESS: Okay. Yes, I find it.

A. Yes, I have the exhibit.

Q. (BY MS. de LEON) Is this a document that you have your patients sign when they have had a seizure?

A. I do that for patients with episodes of unresponsiveness, including seizures.

Q. Okay. And so why do you give this document to patients who have had seizures?

A. I ask them to read the document, go over the document. It talks about precautions, primarily. My concern is about precautions.

MR. KASTER: Yeah, I (inaudible). The question is misleading.

Q. (BY MS. de LEON) Were you finished with your answer, Dr. Aguilar?

A. Yes.

Q. Okay. So, you mentioned you've given this to patients who have had episodes of unresponsiveness, including seizures. What's the difference between the two?

A. You're talking about patients that have syncope, patients that have seizures. If there is a risk for the patient or others, I

use this form.
Q. With Mr. Carrillo, did you believe that he had a seizure?
A. At the end of that visit, I wasn't sure the cause for the episode of unresponsiveness. So, I label him as having episode of unresponsiveness and multiple other symptoms. So, I'm going to do workup to try to define the definite diagnosis.
Q. Did you ever come up with a definite diagnosis for Mr. Carrillo?
A. On my initial visit or in the subsequent visits?
Q. Well, let's go in this first visit?
A. As far as the initial visit, I don't have a definite diagnosis.
Q. Okay. Did you think it was probable that he had had a seizure?
A. Possible seizure.
Q. Okay. Now, you could go back to Exhibit 13 for a moment. On Page 2 of that exhibit, in the patient history, the document notes, look near the bottom, that he reported being a diesel electrician and works on locomotives.

troubleshooting both high and low voltage equipment?
A. No.
Q. All right. And you didn't know that his job involved physical activities, such as, maintaining balance on locomotive steps and ladders?
MR. KASTER: I object to Counsel testifying.
Q. (BY MS. de LEON) You can go ahead and answer.
A. No.
Q. All right. So, then, the restrictions and recommendations that you made were just routine precautions that you put in place following a seizure episode; is that correct?
MR. KASTER: Object to that as a misleading question.
A. If a patient has had an episode of unresponsiveness, yes, I give this form to protect the patient and others from injuries, yes.
Q. (BY MS. de LEON) All right. Let's go and -- I'm going to show you what has previously been marked as Exhibit No. 14.

Do you see that?
A. Yes.
Q. All right. Now were -- at the time that you had him sign that -- well, let me ask you this: Were you familiar at all with any of the details of his job as a diesel electrician working with locomotives?
A. No.
Q. Okay. Now, when you put in place the recommendations, you know, regarding him limiting his conduct and had him sign the seizure guidelines, did you take into account any aspect of his job?
A. I don't understand your question.
Q. Okay. So, did -- did you ask Mr. Carrillo any questions about what his job entailed?
A. No.
Q. Okay. Or did you have any knowledge independent of that about what a diesel electrician working on locomotives is responsible for?
A. No.
Q. Okay. So, you didn't know whether or not that -- his job involved him

And just give me one moment.
You should be able to view it.
THE REPORTER: Excuse me. This is the court reporter. I'm just confirming that all the objections have been Mr. Kaster so far, correct?
MR. KASTER: I think that's right.
THE REPORTER: Okay. Thank you.
MS. de LEON: And, Mr. Kaster, your objection should be limited to form. But you've been okay so far.
MR. KASTER: Thank you.
Q. (BY MS. de LEON) All right. Dr. Aguilar, do you have this exhibit in front of you, Exhibit 14?
A. Exhibit 14.
Okay. Hold on a second.
This neurology consult?
Q. It should say neurology follow-up --
A. Okay.
Q. -- dated September 7th, 2017?
A. Yes.
Q. Okay. And so this is a record of your second visit with Mr. Carrillo; is that correct?
A. Yes.

Q. All right. And by the time of this visit, he had had an MRI; is that right?
And it might help sir, if you look at Page 5 of this exhibit, which is EPCARRILLO392 --
A. 8/16 --
Q. -- under studies.
A. 8/16/2017 MRI brain with and without contrast.
Q. Correct. All right. And it was normal; is that right?
A. Impression normal MRI examination of the brain. No abnormal enhancement.
Q. All right. And he had also had an EEG study; is that right?
A. Yes.
Q. And that was unremarkable; is that correct?
A. Yes.
Q. Okay. Now, did you have any -- did you perform any examine of Mr. Carrillo at this time?
A. Yes.
Q. And what did that exam entail?
A. You want me to read the vital signs,

general exam, mental exam, what do you want me to read?
Q. I just want to ask you generally what -- what do you do during a follow-up visit that might be different from an initial visit?
A. There are some areas that you don't exam. As far as, for instance, the cranial nerves, you don't examine all of them. So it's a briefer examination as compared to the initial one.
But, yes, the examination was done.
Q. All right. And if you look at Page 6 of this document, you have a differential diagnosis listed out again; is that right?
A. Yes.
Q. All right. And I want to ask you about some additional diagnoses that you added here.
On this form, on this date, you added as a potential cause an episode of unresponsiveness; is that right?
A. Yes. Episode of unresponsiveness.
Q. All right. And that is something that you did not have on the first -- on your

initial visit, is it?
A. It's -- it's basically the same as the other --
Q. Okay.
A. -- but, yes, I didn't have it on the initial differential diagnosis.
Q. All right. And you also seemed to have included as a differential diagnosis, single provoked seizure; is that right?
A. There was single unprovoked seizure. Single provoked seizure. It's more complete list of the differential diagnosis.
Q. All right. And then on the next page you address your recommendations again, and you have the same recommendation regarding No. 1, which is for unresponsiveness, correct?
A. Yes.
Q. Right. Where you told him to avoid driving or any other activities where he could injure himself or cause injuries to others if a seizure were to occur; is that right?
A. Here I'm stating: Previously patient was told. So -- so to me here it says, I'm not changing anything. That something was discussed previously on the initial visit.

Q. All right. And under head -- under headaches, you just discussed that you agreed to increase his Gabapentin to include a half tablet in the morning and noon, and then the two at night; is that correct?
A. Yes.
Q. And then for the paresthes- -- paresthesias -- hopefully, I've said that correctly -- what is No. 4, B12, ESR, ANA, RFR, IFE, and anti-aging antibodies. Is -- is that some type of blood work?
A. In -- at this point, I was trying to find the cause for the paresthesias. I'm doing blood work, and I'm doing MRIs, recommending.
Q. Okay. And then you suggest or you schedule a follow-up for October 25th, 2017; is that correct?
A. Yes.
Q. All right. So, why don't we go ahead, you know, and you can close this exhibit.
How -- how are we doing? Do we need a break? I think it's been about an hour -- I'm not a 100 percent sure on that. We keep going?
A. It's fine with me.

Q. All right.
MR. KASTER: Me, too.
Q. (BY MS. de LEON) All right. I'm going to show you what has previously been marked as Exhibit No. 15. Just give me one moment and you can pull that up.
All right. Please let me know when you have that up.
A. Which one?
Q. It's Exhibit No. 15. It's stamped EPCARRILLO395 to 402.
THE CONCIERGE: Mr. Aguilar, you may need to refresh again.
THE WITNESS: Okay.
THE CONCIERGE: Double click in that folder.
A. This follow-up, 10/25, follow-up?
Q. (BY MS. de LEON) Per -- yes, you've got it. It's entitled: Neurology follow-up, date of visit, 10/25/2017; is that right?
A. Yes.
Q. Okay. And these are the notes that you made following your visit with Mr. Carrillo on October 25th, 2000 -- 2017; is that right?
A. Yes.

Q. Now, under the subjective part, you indicate you reviewed the symptoms outlined on his August 7th, 2017 visit, right?
A. Yes.
Q. And then you say: Patient provided the history. Now, the -- the notes that follow, are they based on new conversations that you had with Mr. Carrillo at that time?
A. So, this is a follow-up, so it's about 30 minutes of duration where you get the history that's subjective to see if something else is new, and then you examine the patient.
Q. All right. And there -- Mr. Carrillo hadn't reported anything new at this visit, had he?
A. As far as episodes of unresponsiveness, there were no recurrences. Headaches have been improving from being daily, they were occurring every few days, so there were some improvements as far as symptoms.
Q. And if you could scroll down to Page 7 for me, sir. I want to look at the differential diagnosis section again.
A. Okay. So you want me to review differential diagnosis?

Yes.
Q. There you still have listed episode of unresponsiveness; single unprovoked seizure; single provoked seizure; syncope; you've ruled out stroke, or at least indicated stroke was not demonstrated; CNS infection; and metabolic encephaloathy and others, correct?
A. Yes.
Q. Okay. So, at this time, did you believe you had honed in on what the potential cause of this loss of conscious episode was?
A. No. There is no definite cause for the patient's symptoms.
Q. And under recommendations, you, again, note that previously you had informed him not to drive and to avoid other activities that would result in harm to himself and others, correct?
A. Yes.
Q. Okay. Now, under paresthesias, Item 5, you've referred him to the Mayo Clinic; is that right?
A. Yes.
Q. Okay. And so why did you refer him to the Mayo Clinic?

A. The way I practice, if I don't reach definite diagnosis after doing my evaluation, I offer patients a referral to centers of excellence, and that would be Mayo Clinic. So you're hoping that you would gain a better view and to see if they can come up with a diagnosis.
Q. Was this referral solely in relation to the paresthesias, or was it in relation to the headaches and unresponsiveness, as well?
A. This suggestion was in reference to his multiple symptoms. And that would be the episode of unresponsiveness, the paresthesias, headaches.
Q. Okay. Do you know if Mr. Carrillo ever went to the Mayo Clinic?
A. No.
Q. Okay. And then you also recommend a follow-up visit with him on January 25th, 2018; is that correct?
A. Yes.
Q. All right. So, let's go ahead and look at your follow-up notes from that visit.
You can put this exhibit aside.
I'm going to show you what has

previously been marked as Exhibit No. 21.
A. Yes, I have visit 1/28/2018.
Q. Is it 1/25/2018?
A. Yes.
Q. Okay. All right. So, these are the notes from your neurology follow-up on January 25th, 2018, correct?
A. Yes.
Q. Okay. And is this your last visit with Mr. Carrillo?
A. Yes.
Q. Okay. And he indicated at this visit that his headaches had been resolved; is that correct? That's on the first page.
A. Yes.
Q. You can turn to Page 6 for me, please.
A. Yes.
Q. All right. Under the clinical impression.
A. Yes.
Q. All right. You indicate at the end that you've discussed ongoing symptomatic treatment, other options, referral to university center, et cetera.
What -- what do you mean by that?

A. Ongoing treatment is what he's been getting. That would be the Gabapentin. Other options, paresthesias can be treated with Gabapentin. There are other medications that can be used. And then referral to university center. That -- that's the same as going to the Mayo Clinic.
Q. So, just a referral to another potential center of excellence to help identify what the cause of his symptoms were?
A. Yes.
Q. Okay. Under differential diagnosis, we have a list of episode of unresponsiveness; single unprovoked seizure; single provoked seizure; syncope; stroke was not demonstrated; CNS infection; metabolic encephalopathy; and others. Is that correct?
A. Yes.
Q. Okay. So, am I correct, then, that you did not have a definitive cause for his period of -- or when he lost consciousness?
A. I had not reached a definite diagnosis for his multiple symptoms.
Q. Now, did you -- on the recommendations, you indicate that he'll

continue his care with Ms. Saenz and Dr. Williams; is that correct?
A. Yes.
Q. Why -- why didn't you repeat the recommendation referencing your previous guidance to him to avoid driving or engaging in other conduct that would injure himself or others?
A. I -- I don't understand, where is it?
Q. Sure. And I'm sorry about that.
On the previous visits, under recommendation, you had noted under unresponsiveness that previously he was told not to drive and avoid other activities that could cause injuries to himself and others; is that correct?
A. Yes.
Q. Okay. And why is it that you did not restate that guidance under these recommendations on the January 25th note?
A. I don't know.
Q. Did you make any recommendations to Mr. Carrillo as far as him being able to return to work?
A. No.

Q. Okay. And did you at any point make any assessment of Mr. Carrillo with respect to any risk for future seizures?
A. Typically, when you review records or review symptoms, you don't have a diagnosis in this case. So, yes, there is always a risk for spells. We don't know that percentage of the risk, because there is no definite diagnosis.
Q. All right. And you used the term "spells" there, and just want to make sure that we are clear that when you use spells -- terms of a risk for spells, is that different, in your mind -- is there a difference -- sorry, strike that.
Is there a difference, in your mind, between a risk for spells and a risk for seizures?
A. Spells, I'm using the term for seizures, episodes of unresponsiveness, syncope, all of those would be included.
Q. Am I correct, Dr. Aguilar, that this January 25th was the last time that you saw Mr. Carrillo?
A. Yes.
Q. All right. Well, thank you, sir. I

have no further questions at this time.
THE WITNESS: Thank you.
MR. KASTER: And I'm going to have some questions for you, Doctor. But why don't we take a few-minute break so we can -- before we proceed, because I'll probably be less than an hour, but we've been going for an hour and 20 minutes or so. So let's take a few minutes and we'll come back. Let's say five.
THE VIDEOGRAPHER: All right. This ends Media No. 1. Going off the record at 10:21 a.m. and one second while I stop the recording.
We're off.
(Break.)
THE VIDEOGRAPHER: This begins Media No. 2. Going back on the record at 10:31 a.m.
EXAMINATION
Q. (BY MR. KASTER) Dr. Aguilar, same instructions for you that Counsel reviewed at the beginning. In particular, I would say that if any of my questions are unclear, ask me to repeat and clarify. I'm happy to try to ask you simple, direct questions. And if I fail to do that, just let me know.
Okay, is that --

A. Yes.
Q. -- good?
A. Yes.
Q. Okay. We're going to cover some of the same exhibits that you just went through. At least, we'll talk about a few things that are on those exhibits which reference the various meetings and conferences -- consultations that you had with Mr. Carrillo.
But, let me just back up a little bit. It sounds to me like from looking at the documents, that you saw Mr. Carrillo four -- on four separate occasions; is that correct?
A. Yes.
Q. And you mentioned the first occasion was a visit that lasted about an hour or so.
Do you recall that?
A. Yes.
Q. This lawsuit is about Union Pacific taking the position that Mr. Carrillo cannot -- could not safely perform his job as a diesel electrician, so he lost his job with them for a period of years as a result of -- of them reviewing records.
After visiting with Mr. Carrillo

for four -- on four separate occasions, you were unable to come up with a definitive diagnosis, correct?
A. Yes.
Q. Did anyone talk to you from Union Pacific before Mr. Carrillo lost his position with Union Pacific?
MS. de LEON: Objection, form.
A. No.
Q. (BY MR. KASTER) I'm going to cover a couple of other exhibits that I am not sure if you've seen. But, let's go to Exhibit 8.
MR. FRANCOIS: Just bear with me, I'm getting it pulled up here.
MR. KASTER: Okay. No problem.
MR. FRANCOIS: That's not the right one. Oops, sorry about that. I think I introduced the wrong one here. My apologies.
So one second.
You can take that one there.
Q. (BY MR. KASTER) Okay. I'm going to pull up --
MR. KASTER: Or are you pulling it up?
MR. FRANCOIS: Yeah, I am, Jim. It's just giving me a little bit of a hard time.

MR. KASTER: Okay. No problem. No problem.
MR. FRANCOIS: Just bear with me one second.
MR. KASTER: Okay.
MR. FRANCOIS: All right. We should be good now.
MR. KASTER: Okay.
THE CONCIERGE: Yes, it is. It should be in there, Counsel.
Q. (BY MR. KASTER) Okay. Pulling up Exhibit 8. These are records from Mia Saenz --
A. I don't find that exhibit.
Q. You don't find it?
MR. FRANCOIS: So -- so, Mr. Aguilar, you're going to need to double click on the marked exhibits folder to make that refresh.
THE WITNESS: Okay. Yes. No. 8?
MR. KASTER: Correct.
A. Okay. Yes, I have No. 8.
Q. (BY MR. KASTER) Okay. One of the things about -- so, these are records from a care provider, Mia Saenz. Did you see these records for Mr. Carrillo?
A. I see it, yes. I had never seen it.

Q. Let me rephrase the question.
Did you see them at the time of your visits with Mr. Carrillo?
A. No.
Q. All right. It says here chief comp- -- the chief complaint is: Patient is here for physical exam and states last Tuesday he fainted.
Is that the same thing -- is that a synonym for syncope?
MS. de LEON: Objection, form.
A. Fainting is used for syncope.
Q. (BY MR. KASTER) And one of the things you talked about with syncope, was that in- -- with syncope a lot of times you might be light-headed prior to the event, right?
A. Yes.
Q. Mr. Carrillo was actually sleeping prior to the event, right?
MS. de LEON: Objection, form.
A. Do -- do you want me to go to initial sheet that I received -- that I obtained? Because this is a records from somebody else.
Q. (BY MR. KASTER) No, I understand. I understand.

Well, let's defer on that question. We can come back to it.
One of the things that this record talks about, if we go to -- if you go to page -- what is Bates-stamped Page 329, in the bottom right-hand corner, there's Bates-stamped pages on the document.
Do you see that, Doctor?
A. 329?
Q. Yes, that would be CARRILLO -- UPCARRILLO0000329. It's actually --
A. Yes.
Q. -- Page 5. It says, in the discussion of the patient, it says, educated on adequate sleep, hydration and healthy diet.
Can dehydration cause -- cause an event of syncope?
A. Yes.
Q. If we go back to -- let -- let's go to Exhibit 11.
MR. FRANCOIS: Hold on one second.
MR. KASTER: Sure.
MR. FRANCOIS: Give me a second here. My computer is just moving a little slower than normal.
MR. KASTER: It's all right.

MR. FRANCOIS: You said Exhibit 11, correct, Jim?
MR. KASTER: I did say that.
Thank you.
MR. FRANCOIS: We're good now.
Q. (BY MR. KASTER) Okay. I'm pulling up Exhibit 11.
Do you see that, Doctor?
Can you click on that?
A. Yes.
Q. Mr. Carrillo was simultaneously with your visiting with him as a neurologist, Mr. Carrillo was also getting a cardiology workup; is that correct?
A. This is a note from a cardiologist, is that what you're saying?
Q. This is the reason for an appointment is -- it appears that this relates to an EKG?
MS. de LEON: Objection, form.
Q. (BY MR. KASTER) If you look at the reason for the appointment.
Do you see that on the first page, syncope and collapse, PCP, Mia Saenz, EKG done today?
A. Okay. Yes.

Q. Did you see this record prior to today?
A. No.
Q. And, again, and with the history of the present illness, it says 31-year-old male with no significant PMH. Do you know what that stands for, "PMH?"
MS. de LEON: Objection, form.
A. PMH?
Q. (BY MR. KASTER) Would that be a prior medical history?
MS. de LEON: Objection, form.
A. Where is that, Page 1?
Q. That would be on Page 1 of the document, Page 1 of 3 under general.
A. Okay. And the question is what? I'm sorry.
Q. We were referring to an acronym, PMH, and I was wondering if you know -- if you know if that refers to prior medical history?
A. Past medical history, no medical history. Maybe I'm not reading what you're -- want me to read.
Q. No, that's -- that's fine. But it -- and then it goes on to talk about, he's here

for an evaluation of syncope.
Do you see that?
A. Yes.
Q. And then if we go to your first visit with Mr. Carrillo, that is represented by Exhibit 13, the 8/7 visit, correct?
So, if you go to that Exhibit 13 and go to the first page?
A. Neurology consultation?
Q. Right. And that's -- the date of that visit is 8/7 of 2017, correct?
A. Okay. Yes.
Q. And you've talked here about an episode of unresponsiveness in terms of onset, correct?
A. Episode of unresponsiveness, yes.
Q. Now, throughout this time, I think you say that you were unable to determine the length of time of the unresponsiveness; that the duration was unknown.
Do you see that? It's probably ten lines down under history of present illness?
A. Yes.
Q. Would it be fair to say that when you

are unconscious or when you lose consciousness, that you yourself might not be able to determine or know what that duration is?
A. Yes.
Q. Did you ever speak to his significant other, his girlfriend?
A. No.
Q. You review a number of (indiscernible) systems, and I just want to ask you, at the bottom of Bates-Page 382, which is Page 2 of your visit, at the bottom of that page, I'm a little confused by this. It says, "constitutional system review." Do you see that line?
A. Yes.
Q. It says, "Patient denies weight loss. Denies fever, denies chills." But then it says, "He lost about 20 pounds after the episode of unresponsiveness."
A. Yes.
Q. That would be a significant weight loss, right?
A. Yes.
Q. You review a number of systems, his cardiovascular system, his endocrine system,

gastrointestinal, musculoskeletal, respiratory, all of the systems that you reviewed were normal, right?
A. He was told that he probably had prediabetes in the most recent lab test.
Q. Okay. So he had to -- he had to lose some weight, right?
A. Yeah. And he had diarrhea and nausea --
Q. Uh-huh.
A. -- after the episode of unresponsiveness.
Q. Uh-huh. Okay.
A. And then he had had muscle pain, flu-like symptoms.
He had a cough. He reported itching. He reported anxiety, depression.
Q. You mentioned the anxiety earlier that he had reported. He actually told you he had anxiety before this event, right?
A. In the review of systems, he reported anxiety.
Q. Sure. But going back to that record, the reference to anxiety, it says -- and I'm looking at Page 2 of the document. It says:

He reported I -- anxiety episodes since the episode. I assume that's the episode of unresponsiveness, right?
Are you with me, Doctor?
A. He reported anxiety episodes since the episode.
Q. Right.
A. Since the episode of unresponsiveness, yes.
Q. Okay. But, right there in the next line it says, he had anxiety before, right?
A. Yeah, he had anxiety before.
Q. Okay. And then if we go down to the -- what is Page 385 -- or Page 5 of 6, you review his motor functions?
A. Yes.
Q. And that's summarized there.
No weakness in the right or left thumb, fingers, middle finger; no hand-grip weakness; no wrist weakness; no elbow weakness, right?
A. Yes.
Q. Did I understand you to say earlier that typically that it's oftentimes true that with respect to a seizure, that you will be

able to find the cause?
MS. de LEON: Objection, form.
A. With respect to the seizures, the cause a lot of times is not (no audio).
Q. (BY MR. KASTER) I'm sorry, I didn't hear -- I -- I'm not sure that we heard that answer. The cause is not what, I'm sorry?
A. Determined, a known cause for a seizure.
Q. Well, one of the reasons why you do an MRI, for example, is to find out if a person has a lesion in the brain, right?
A. Yes.
Q. And one of the reasons why you perform the other tests, the EEG, is to find out if there was seizure activity?
A. Yes.
Q. So, is it time -- is it oftentimes true that with respect to a seizure, you can find a physical cause or physical evidence?
MS. de LEON: Objection, form.
A. It's not uncommon not to find a cause for a seizure.
Q. (BY MR. KASTER) Okay. Not really my question. My question is: Is it oftentimes

true that you can find a cause for a seizure?
A. Can you repeat the question?
Q. Sure. Is it oftentimes true that you can find a cause for a seizure, a physical cause?
MS. de LEON: Objection, form.
A. Sometimes you find a cause for the seizures, yes.
Q. (BY MR. KASTER) We've gone through the recommendations that you had for Mr. Carrillo to avoid driving and other things. That's a part of your last section of Exhibit 13, your first visit with Mr. Carrillo, right?
A. Yes.
Q. At the bottom of that section of your record, you reference a long explanation regarding the above. And you say, I also explained that despite multiple tests, a definite diagnosis might not be reached.
This is on Page 7 of your document. Do you see where I'm looking?
A. Yes.
Q. So, you had a long conversation with Mr. Carrillo about how you may not find or be able to reach a definite diagnosis?

A. Yes.
Q. Let's go to Exhibit 14.
A. Yes.
Q. We start out in Exhibit 14, again, talk about an episode of unresponsiveness, right? If you look under subjective?
A. Yes.
Q. You still at this point don't know how long the episode lasted, right?
A. So, it would be like a -- see history and physical description. So, yes, the duration and all of that is unknown.
Q. Yeah, if we look at Page 2 of this document, it says the duration of the episode is unknown, right?
A. Yes.
Q. Does that matter, by the way?
MS. de LEON: Objection, form.
A. Regarding what?
Q. (BY MR. KASTER) In terms of dec- -- deciding if it was a fainting episode or a seizure episode, does it matter how long it lasted?
A. It would help with the history.
Q. Would it be more likely to be an event

of syncope or fainting if the episode wasn't of short duration?
MS. de LEON: Objection, form.
A. So, the -- the duration of seizures is shorter than seizures. Syncope lasts less -- let's say, a minute, minute and a half. Seizures may last two, three minutes.
Q. (BY MR. KASTER) So, the duration might be important?
A. It's one of the characteristics that help to reach a diagnosis.
Q. If we go to Page 6 of this document, I think you talked about that before. If we go to Page 6, of the document.
A. Yes.
Q. We see under, clinical impression, he denied reoccurrences. MRI brain and EEG were unremarkable.
A. Yes.
Q. Unremarkable simply means that they were normal, right?
A. Normal examination.
Q. One of the -- one of the words that was used earlier was "paresthesias." What is paresthesias?

A. It's an abnormal sensation. It can be used for numbness.
Q. Uh-huh.
A. Tingling. Burning.
Q. I'm sorry. I didn't mean to cut you off?
A. Bur- -- burning, pain, burning.
Q. Mr. Carrillo was taking Gabapentin for a condition like that prior to this episode, right?
A. Yes.
Q. And still at the end of the second visit, you have a differential diagnosis, right?
A. What was the question, sir?
Q. At the end of the second visit, you still have a differential diagnosis?
A. Yes.
Q. So, you can't -- and were unable to identify which of these conditions Mr. Carrillo had experienced, correct?
A. Yes.
Q. You're pretty sure it's -- wasn't a stroke? He doesn't have any physical symptoms of a stroke, right?

A. Stroke was not demonstrated on MRI brain.
Q. So, if we go to Exhibit 15 -- and by the way, you still have this recommendation in here, you referred to the recommendation that was made earlier about driving, right?
A. Episode of unresponsiveness, previously patient was told. Is that what you're talking about?
Q. Yeah. Right. You're repeating what the recommendation was from your earlier visit a month earlier about driving, right?
A. Yes.
Q. All right. Let's go to Exhibit 15.
A. Yes.
Q. This is your visit a little bit more than a month later where you go through the background and history with the patient. The history of the present illness is at the bottom of Page 1 of the document, right?
A. Yes.
Q. And you talk about his symptoms and, again, the duration of the episode is unknown, right? That's referred to on Page --
A. Yes.

Q. -- 2, middle of the page?
A. Yes.
Q. And you've referenced the fact that his girlfriend was there with him because she heard him snoring, right?
A. Are you going back to the initial history?
Q. Right.
A. Yes.
Q. And if we go to the end of this document, under clinical impressions, Page 6, and I think you referenced this earlier. His headaches were improving, right?
A. Improving, headaches improving.
Q. This is under clinical impression?
A. Yes.
Q. And then if we go to Page 7 you had, again, the differential diagnosis, right?
A. Yes.
Q. And, again, you referred to in the recommendation, a reference to driving or other activities -- to avoid those activities, right?
A. Yes.
Q. I'm going to take you to Exhibit 17, which I'm not sure if you've seen this before

or not.
MR. FRANCOIS: Working on it, Jim. Give me a sec.
MR. KASTER: Yeah, thank you.
MR. FRANCOIS: Sure.
Should be good.
MR. KASTER: Not seeing it yet -- let me refresh here. Oh, there it is. I got it.
Thank you.
A. Yes.
Q. (BY MR. KASTER) This is an e-mail from Mr. Carrillo to finish for duty people at Union Pacific. It references a recommendation from his family doctor. And the papers that he received, I -- I believe, from you, being forwarded to them.
Did you ever speak to Doc- -- Mr. Carrillo's family doctor?
A. No.
Q. Did you ever make any kind of a recommendation about whether and when he could return to work?
A. No.
Q. No one from Union Pacific asked you about whether and when Mr. Carrillo could

return to work?
MS. de LEON: Objection, form.
A. No.
Q. (BY MR. KASTER) And let's go to Exhibit 21, which I believe is your last visit with Mr. Carrillo.
A. Yes.
Q. And this was in January of 2018, correct?
A. Hold on a second. I have that one -- exhibit -- what's the number, you said.
Q. This would be Exhibit 21.
A. 21? Yes.
1/25/2018.
Q. And I think you indicate that at this point in time Mr. Carrillo's headaches had resolved, right?
A. Yes.
Q. And you do -- you referenced the tests that had been done, the EEG and MRI, right?
A. Yes.
Q. And there's no abnormality?
A. MRI brain?
Q. Normal MRI examination of --
A. Yes.

Q. -- of the brain. No abnormal enhancement. This is on Page 6.
A. Yes.
Q. And the EEG was also unremarkable, right?
A. Yes.
Q. You still have the differential diagnosis of the listed possibilities, right?
A. Yes.
Q. So, after the four visits with Mr. Carrillo, you were unable to reach a definite diagnosis, correct?
A. Yes.
Q. In terms of the recommendation, you were asked earlier why the recommendation regarding driving or not driving does not appear here. And I think you said, I don't know.
Do you recall saying that?
A. Yes.
Q. Is it possible that you don't know because you don't remember?
A. I don't know.
Q. Is it possible that the reference to a lack of recommendation -- I'm -- that's a bad

question. Let's start over.
Is it possible that there is no recommendation regarding driving and that that lack of a recommendation was intentional?
MS. de LEON: Objection, form.
A. I don't know.
MR. KASTER: That's all the questions I have for you, Doctor. Thank you.
THE WITNESS: Thank you.
MS. de LEON: Thank you, Doctor. I have no questions -- no further questions.
THE VIDEOGRAPHER: All right. This concludes today's deposition. Going off the record at 11:07 a.m. and one second while I stop the recording.
THE REPORTER: This is the reporter. Mr. Kaster, do you want a copy of this deposition?
MR. KASTER: Oh, sure. We have a -- Sherick will give you the standard order --
THE REPORTER: Okay.
MR. KASTER: -- we have.
THE REPORTER: All right.
(Deposition adjourned at 11:07 a.m.)

CERTIFICATE

I, SANDRA M. MIEROP, Certified Shorthand Reporter in and for the State of Texas, hereby certify that the foregoing proceedings were taken before me at the time and place herein set forth; that the witness was sworn to tell the truth; that the proceedings were reported stenographically by me and later transcribed by computer transcription; that the witness requested signature; that the foregoing is a true record of the proceedings taken at that time; and that I am not a party to, nor do I have any interest in, the outcome of the action herein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal this 1st day of March, 2022.

SANDRA M. MIEROP
Certified Shorthand Reporter No. 2185
State of Texas

Mr. Lucas J. Kaster, Esq.
kaster@nka.com

March 1, 2022

RE: Carrillo, Joseph v. Union Pacific Railroad Company
2/11/2022, Dr. Mario R. Aguilar (#5047629)

The above-referenced transcript is available for review.

Within the applicable timeframe, the witness should read the testimony to verify its accuracy. If there are any changes, the witness should note those with the reason, on the attached Errata Sheet.

The witness should sign the Acknowledgment of Deponent and Errata and return to the deposing attorney. Copies should be sent to all counsel, and to Veritext at errata-tx@veritext.com.

Return completed errata within 30 days from receipt of testimony.

If the witness fails to do so within the time allotted, the transcript may be used as if signed.

Yours,
Veritext Legal Solutions

Carrillo, Joseph v. Union Pacific Railroad Company
Dr. Mario R. Aguilar (#5047629)

ERRATA SHEET

PAGE_____ LINE_____ CHANGE_____
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_____ _____
Dr. Mario R. Aguilar Date

Carrillo, Joseph v. Union Pacific Railroad Company
Dr. Mario R. Aguilar (#5047629)

ACKNOWLEDGEMENT OF DEPONENT

I, Dr. Mario R. Aguilar, do hereby declare that I have read the foregoing transcript, I have made any corrections, additions, or changes I deemed necessary as noted above to be appended hereto, and that the same is a true, correct and complete transcript of the testimony given by me.

_____ _____
Dr. Mario R. Aguilar Date
*If notary is required

SUBSCRIBED AND SWORN TO BEFORE ME THIS
_____ DAY OF _____, 20___.

_____
NOTARY PUBLIC

Exhibit KK

Union Pacific Railroad
Health and Medical Services

HEALTH & MEDICAL SERVICES STATUS UPDATE

March 05, 2018

To: Andreas Mader (00421353), Anthony Holman (00021633), Brett Thomason (00438092), Daniel Glenn (00231018), Heather Aguilera (00415677)

From: Bridgette Ziemer/ OCC Health Nurse

On behalf of Union Pacific Chief Medical Officer

Subject: **Fitness for Duty Determination**

Regarding: Joseph A. Carrillo

Employee ID #: 00457172

Job Title: Electrician

Regarding Health & Medical Service: HEALTH CONDITION - REPOR ☑ Off Duty ☐ On Duty/Occupational

Based on medical information available to Health & Medical Services at this time, the employee is:

Not Medically Cleared - Temporary effective March 05, 2018

☑ MLOA recommended effective July 01, 2017 through April 01, 2018

Comment:

In accordance with Union Pacific Railroad Medical Rules, this employee will require a Fitness-For-Duty review ***prior*** to his/her return to work. Please ensure that your employee contacts the FFD nurse upon their request to return to work.

For questions, please contact, Bridgette Ziemer at 877-275-8747.

CC:

Business References: BU006_BU Template Letter – MLOA Approved Off Duty
BU007_BU Template Letter – MLOA Approved On Duty
FL001_FMLA Notice Of Eligibility and Rights & Responsibilities

Exhibit LL

Re: Disability Letter

We are in receipt of information from your employer indicating that you stopped working because you are disabled. In order for your health coverage to continue, we must have the proof of your disability statement below completed by your attending physician.

The completed form should be mailed or faxed to Railroad Enrollment Services. The mailing address and fax number are:

Railroad Enrollment Services
PO Box 30775
Salt Lake City, UT 84130-0775
Fax #: (248) 733-6080

IF THIS PROOF OF DISABILITY IS NOT RECEIVED, YOUR COVERAGE WILL BE TERMINATED.

If you have questions, please call Railroad Enrollment Services at (800) 753-2692.

TO BE COMPLETED BY ATTENDING PHYSICIAN:

Please put Union Pacific employee id here:
0457172

I certify that Joseph Carrillo has been disabled from performing his/her regular occupation from 7.1.2017 (Date) to 4.1.2018 (Date) due to the following condition(s):

RHC → Neurology

Is the employee permanently disabled from his/her regular occupation? YES **NO**
(Please circle one.)

If no, please give us an estimated return to work date 4.1.2018, or

the date of his/her next appointment with you N/A.

John P Holland MD MPH 3-5-2018
Physician's Signature Date

UNION PACIFIC RAILROAD
HEALTH & MEDICAL SERVICES
1400 DOUGLAS STREET #0350
MDOS96 OMAHA, NE 68179-0350

I AM NOT THE TREATING PHYSICIAN. THIS FORM COMPLETED IN MY CAPACITY AS MEDICAL DIRECTOR FOR THE UNION PACIFIC RAILROAD.

United States of America
Railroad Retirement Board

Form Approved
OMB No. 3220-0039

SUPPLEMENTAL DOCTOR'S STATEMENT

EID: 0457172

Social Security Number

Patient's Name: JOSEPH CARRILLO

INSTRUCTIONS TO DOCTOR: ***Please complete all items and return this form*** in the enclosed envelope to the Railroad Retirement Board (RRB) ***immediately***. No additional sickness benefits can be paid to this patient until this supplemental medical form is completed and returned. This information is to be supplied without expense to the RRB. Also read the "Important Notice" on the previous page of this form.

1. Have you examined or treated the patient for illness or injury? ☐ Yes ☒ No
   If "Yes," give the date you last examined or treated the patient: LAST PHYSICAL - JANUARY 2018
   MEDICAL FILE REVIEW ONLY
2. Please give:
   A. Diagnosis: LOSS OF CONSCIOUSNESS
   B. Current objective finding:
   C. Complications (show any factors retarding recovery):
   D. Current response to treatment:
3. Did the patient require surgery? ☐ Yes ☒ No – Go to Item 4
   If "Yes" - A. Indicate the type of surgery:
   B. Date of most recent surgery:
4. If maternity, give estimated or actual date of delivery: Ø
5. Do you believe the patient is now able to work without restriction in his/her last occupation?
   A. ☐ Yes – Give the date the patient became able to work:
   B. ☒ No – Give an estimated return-to-work date and explain how the medical evidence shows the patient is still disabled. ARTW DATE is 4.1.2018
   Estimated return-to-work date (*if indefinite, give estimated date*):
   Explanation: PER UPRR HMS GUIDELINES - NOT FFD
   REVIEW IN PROGRESS
6. Has the patient reached maximum medical recovery? ☐ Yes ☐ No – Go to Item 7
   If "Yes" - A. Give the date the patient reached maximum recovery: Ø
   B. Is the patient able to do some kind of work? ☐ Yes ☑ No
7. I certify that the information I am giving is true, complete, and correct. I understand that criminal and civil penalties may be imposed on me for false or fraudulent statements or for withholding information to cause or prevent payment of benefits by the RRB.

Signature of Doctor: John Holland MD MPH	Degree/Title: CMO
Name of Doctor (Print or Type): John Holland	Date: 3.5.2018
Address (Print or Type): 1400 Douglas	Office Telephone Number (Include area code): (817) 275 8747
City, State, ZIP Code: Omaha NE 68179	National Provider Identifier:

I AM NOT THE TREATING PHYSICIAN. THIS FORM COMPLETED IN MY CAPACITY AS MEDICAL DIRECTOR FOR THE UNION PACIFIC RAILROAD.

SI-7 (06-09)

aetna®

PO Box 14560
Lexington
KY
40512-4560

Attn: SYLVIA BRANCH

Ph: 1-800-205-7651

Fax: 18666671987

ATTENDING PROVIDER STATEMENT (APS)

Please furnish this information about your patient's current absence. The patient's receipt of Disability Benefits depends upon the immediate return of this form.

Patient: EID# 0457172 SS#

Claim #: 15984536

Date of Birth: Job Title/Function: ELECTRICIAN

Provider Name (Please Print): JOHN P. HOLLAND Specialty: CMO UPRR

Provider Title (MD, PhD, etc)

UNION PACIFIC RAILROAD
HEALTH & MEDICAL SERVICES
1400 DOUGLAS STREET #0350
OMAHA, NE 68179-0350

DO NOT USE FOR TRAINING PHYSICAL EXAM
USE COMPLETED BY DOT CERTIFIED AP ONLY
DIRECTOR FOR THE UNION PACIFIC RAILROAD

Provider Phone: (Provider Fax: ( )

Provider Address:

Diagnosis: Syncope, RBBB, Sinus Bradycardia

ICD-9 Is Diagnosis work related? o Yes ✓ No

Surgery / CPT: Date: / /

Hospitalized? o Yes ✓ No Ad: / / Di / /

Signs / Symptoms preventing patient from performing job

Significant diagnostic exams / Per UPRR HMS Guidelines EE NOT yet cleared FIT FOR DUTY. Review remains in Progress As of 1.19-2018

Current Treatment: WITH PTCP

Medication(s) & dosages:

First Treatment Date 07 / 03 / 2017 Most Recent Appt: JANUARY 2018

Next Appt: / /

EDC (pregnancy only): / /

Specialist Referral: Cardiology + Neurology Specialty:

Name

Phone: ( )

Date of referral: / /

Could patient work with restrictions? o Yes X No

If YES please describe restrictions:

If NO dates requesting Total Disability:

Start Date: 7/1/2017 Through Date: 4.1.2018

Is Patient PERMANENTLY disabled? o Yes X No

If Reduced working hours and/or Restrictions are requested, indicate:

Start Date: / / Through Date: / /

Date Patient may Return to Work

Full time / Full duty: / /

Hour / day: # Days /week:

John P Holland MD MPH 3-5-2018

Attending Provider's Signature Date

Union Pacific Railroad
Health and Medical Services

Exhibit NN

April 05, 2018

Joseph A. Carrillo
3013 Zacatecas Ct
Las Cruces, NM 88012

Employee ID: 00457172
Employee Position: Electrician

Dear **Joseph A. Carrillo**:

Union Pacific Health & Medical Services (HMS) has been notified of your request for time off due to a medical reason. Based on the information reviewed:

[x] A Medical Leave of Absence is recommended for the following dates:
July 01, 2017 - July 01, 2018

The requested medical records may be submitted to **Health & Medical Services confidential fax line at 402-501-0067. Please use the enclosed bar coded cover sheet when faxing your information.**

If you are having difficulty in obtaining the medical records in the requested time frame, please contact your FFD nurse at number listed below. Following these steps will be helpful in ensuring that the medical records required are complete so the FFD review can take place as efficiently as possible. You and your manager will be notified when you have been medically cleared to return to work by Health & Medical Services.

If at any time you have questions regarding the Return to Work process, please contact your FFD nurse at Health & Medical Services at the number listed below.

Sincerely,

Bridgette Ziemer
Fitness For Duty Nurse
Health & Medical Services

Union Pacific Railroad
Health and Medical Services

Union Pacific Railroad
1400 Douglas Street - STOP 0350
Omaha, NE 68179
Phone: 877-275-8747
Fax: 402-501-0067

CC:

The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of an individual or family member of the individual, except as specifically allowed by this law. To comply with this law, we are asking that you not provide any genetic information when responding to this request for medical information. "Genetic information," as defined by GINA, includes an individual's family medical history, the results of an individual's or family member's genetic tests, the fact that an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services.

CONFIDENTIAL

Exhibit OO

Union Pacific Railroad
Health and Medical Services

HEALTH & MEDICAL SERVICES STATUS UPDATE

April 05, 2018

To: Andreas Mader (00421353), Anthony Holman (00021633), Brett Thomason (00438092), Daniel Glenn (00231018), Heather Aguilera (00415677)

From: Bridgette Ziemer/ OCC Health Nurse

On behalf of Union Pacific Chief Medical Officer

Subject: **Fitness for Duty Determination**

Regarding: Joseph A. Carrillo

Employee ID #: 00457172

Job Title: Electrician

Regarding Health & Medical Service: HEALTH CONDITION - REPOR ☑ Off Duty ☐ On Duty/Occupational

Based on medical information available to Health & Medical Services at this time, the employee is:

Not Medically Cleared - Temporary effective April 05, 2018

☑ MLOA recommended effective July 01, 2017 through July 01, 2018

Comment:

In accordance with Union Pacific Railroad Medical Rules, this employee will require a Fitness-For-Duty review ***prior*** to his/her return to work. Please ensure that your employee contacts the FFD nurse upon their request to return to work.

For questions, please contact, Bridgette Ziemer at 877-275-8747.

CC:

Business References: BU006_BU Template Letter – MLOA Approved Off Duty
BU007_BU Template Letter – MLOA Approved On Duty
FL001_ FMLA Notice Of Eligibility and Rights & Responsibilities

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF TEXAS

EL PASO DIVISION

Exhibit PP

- -

Joseph Carrillo, Case No. 3:21-cv-00026-FM

Plaintiff,

v.

Union Pacific Railroad Company,

Defendant.

- -

REMOTE DEPOSITION OF

DR. HARRIS A. FRANKEL

DATE: December 17, 2021

TIME: 8:57 a.m. CST

PLACE: Veritext Virtual Videoconference

REPORTED BY: Jayne M. Seward, RPR

Job No: 4971966

* * APPEARANCES * *

On Behalf of the Plaintiff: (via videoconference):
Lucas J. Kaster, Esquire
Nichols Kaster, PLLP
4700 IDS Center
80 South Eighth Street
Minneapolis, Minnesota 55402
(612) 256-3200
lkaster@nka.com

On Behalf of the Defendant: (via videoconference):
Robert L. Ortbals, Esquire
Constangy, Brooks, Smith & Prophete, LLP
680 Craig Road
Suite 400
St. Louis, Missouri 63141
(314) 338-3740
rortbals@constangy.com

I N D E X

WITNESS: DR. HARRIS A. FRANKEL

EXAMINATION:

EXHIBITS MARKED:

REPORTER'S NOTE: All quotations from exhibits are reflected in the manner in which they were read into the record and do not necessarily indicate an exact quote from the document.

P R O C E E D I N G S

DR. HARRIS A. FRANKEL,
duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. KASTER:

Q. Good morning, Doctor. Could you just say and spell your name for the record?

A. Yes. Harris Alan Frankel; H-A-R-R-I-S, A-L-A-N, F-R-A-N-K-E-L.

Q. Thank you, Doctor. And we met briefly off the record. My name is Lucas Kaster. I am one of the attorneys who's representing Mr. Carrillo in his case against Union Pacific.

Have you ever been deposed before?

A. I have.

Q. How many times?

A. Oh, I -- it would be difficult to estimate. I would say 25 perhaps.

Q. How many of those depositions had to do with cases involving Union Pacific?

A. None.

Q. And so I'm assuming those depositions had to do with your job with Nebraska Medicine?

A. No. Actually the lion's share of those occurred while I was in private practice, and

largely in my role as a treating physician typically in workers' comp or personal injury cases.

Q. Since you've been through this before, I won't run through all of the rules, but this may be your first time doing a virtual deposition where we're all in separate locations.

So just a reminder to try to wait until I'm done asking the question before you start to answer. I'll try to do the same for you. Just so Jayne can take down everything that we're saying.

If at any point you need a break, just let me know. I usually take breaks about every hour or so. The only thing I'd ask is that if I've asked a question, that you answer that question before we take a break.

All right?

A. Okay.

Q. You were placed under oath a minute ago.

What does that mean to you?

A. To tell the truth, the whole truth and nothing but the truth.

Q. Is there any reason you cannot do that today? Meaning are you under the influence of any drugs or alcohol that would impair your ability to understand questions and answer truthfully?

A. No.
Q. What did you do to prepare for your deposition today?
A. I reviewed my report, and I was also provided the cover letter that was provided to me by Dr. Holland regarding this case and was also provided a few email correspondences that I reviewed.
Q. Did you speak to anybody?
A. I did not, other than Bob.
Q. And we'll take a look at some of those records at some point during the deposition today, and you can just tell me at that point if those are the records you reviewed. Okay?
A. That would be fine.
Q. If you could, just run me through your occupational kind of history.
A. So I'm a neurologist. I was in private practice, general neurology, from August 1 of 1990 until April 1st of 2011. I was in a -- part of a group of multiple neurologists.
I left my practice after having been recruited by the then CEO of UNMC Physicians and took over the directorship of the Neurosciences clinic, which was then operated by the faculty

practice group, the UNMC Physicians. That started April of 2011. I stayed in that role as medical director really through June of 2014, as I was tapped to step into the chief medical officer role for the health system on January 1 of 2014, which is my full-time occupation currently.
That being said, I still see patients one day a week and have done so since stepping in the role of chief medical officer at Nebraska Medicine.
Q. Remind me of the date that you stepped into the chief medical officer role.
A. January 1st, 2014.
Q. And you were saying that you were a medical director. You were saying UMC or UNC?
A. Well, it's U-N, so University of Nebraska Medical Center Physicians, so UNMCP. At the time the faculty practice group operated the ambulatory clinics.
Q. And, Doctor, I'll just give you a little warning -- well, not really a warning, but try to just slow down a little bit for Jayne just when you're speaking so she can make sure she's getting down what you're saying.
Okay. When you were in private practice,

you said that you were a neurologist, right?
A. Yes.
Q. And when you were working with patients, did you see them in person?
A. I did.
Q. Okay. And why did you do that?
A. Well, I was asked to perform consultations on patients, and the routine would be to see the patient, take a history and examine the patient, and then formulate an opinion and potential care plan for that patient.
Q. Did you feel that it was important to see the person or talk to the person face to face?
A. I did.
Q. Why is that?
A. To get the history from the patient and/or if they had somebody who could corroborate the history with them, that was important.
Q. And why would it be important to have somebody who was with them also provide some history about the person's condition?
A. Well, if it's -- are you asking me about this case specifically or just in general?
Q. Just in general.
A. Yeah. Well, in general, if a patient is

being seen perhaps for an issue for which they may not have had full recollection or there may have been some reason where they're not able to provide a cogent history, perhaps somebody who's got cognitive impairment for whatever reason, having that third party present who can corroborate the history and potentially provide details that the patient may not be able to helps in formulating an opinion about the case.
Q. And did you say when you were the medical director at UNMCP -- I think you said between April of 2011 and January of 2014, right?
A. Through June of 2014.
Q. -- did you see patients still during that period of time?
A. I did.
Q. Okay. And did you take the same approach in terms of seeing patients that you took when you were in private practice?
A. I did.
Q. And you said that you still see patients now as the chief medical officer; is that right?
A. I do. Well, I see patients as a faculty physician who's a neurologist. Not in my role as chief medical officer.

Page 10

Q. And so are you seeing them with neurology students?
A. Occasionally I have students rotate with me.
Q. And do you take the same approach in terms of seeing patients in person?
A. I do.
Q. And what courses do you teach?
A. I don't teach any didactic course currently.
Q. And so explain to me what your involvement is with medical students.
A. If a medical student happens to be rotating through my clinic on the day in which I'm in clinic, obviously their role is largely observational. They -- they watch me take a history from a patient. They watch me examine a patient. We discuss the exam.
My role is largely teaching them the neurologic exam. We talk about the case. We talk about differential diagnosis. So basically it's a general neurological education appropriate to a medical student's level of learning.
Q. And I previously spoke with a Dr. Diesing. Is he within your department?

Page 11

A. He is.
Q. And Dr. Diesing had explained to me, and I'm not going to remember this off the top of my head very well, but that there's different organizations or branches of the medical center: There's an educational part and then the actual medical part.
Can you explain that to me?
A. So Nebraska Medicine is an integrated system. We are the clinical partner to the University of Nebraska Medical Center, which is composed of six different colleges and three different institutes.
And so faculty physicians are -- have a dual appointment where I would say that -- that they're dually employed. One is there through their academic department in the College of Medicine. The other is through Nebraska Medicine, which the employment relationship with Nebraska Medicine is for the clinical work they do in our clinics.
Does that make sense?
Q. Sure. So there's the educational arm and then the clinical arm?
A. Right.
Q. And are most of the physicians employed by

Page 12

both arms?
A. Yes.
Q. And, as chief medical officer, I'm assuming you have roles in both of those arms?
A. Actually I -- my role, as chief medical officer, is for the health system. So Nebraska Medicine is my primary employer, and my administrative activities and accountabilities are largely for Nebraska Medicine, the health system.
I do serve on some committees that are based out of the College of Medicine and/or UNMC, but my role is primarily for the health system. Now, that being said, I work collaboratively with the medical center.
Q. And you said that there was six schools within that College of Medicine kind of arm. What are the six schools?
A. College of Medicine, College of Nursing, College of Pharmacy, College of Public Health, College of Allied Health and -- what am I missing? Did I say College of Dentistry?
Q. You did not. I think that --
A. Okay.
Q. -- that's the last one.
A. Okay. I think that's the last one, yeah.

Page 13

Q. And are those all located in Omaha?
A. The College of Dentistry is primarily located in Lincoln. All the other colleges are located on the campus here.
Q. If you could, just briefly run through your educational background.
A. Would you like me to start with my undergraduate education?
Q. Sure.
A. So I attended the University of California, San Diego, from 1978 to 1982. I received a BA in animal physiology with a concentration in neurophysiology.
I then attended, from 1982 to 1986, the University of Nebraska College of Medicine. Following my completion of medical school, I did a one-year internship in internal medicine at Creighton University Medical Center in Omaha.
And following that I then did a three-year neurology residency at the University of Texas Southwestern Medical Center in Dallas, and that was completed in June of 1990.
And then following that I moved back to Omaha and entered private practice.
Q. During your career, have you held any

Page 14

positions in occupational health?
A. I'm sorry. Could you ask that again?
Q. Sure. Have you held any positions related to occupational health specifically?
A. I have not.
Q. Do you have any training in occupational health?
A. I do not.
Q. Have you conducted any occupational health exams in your experience?
A. Could you define an occupational health exam for me?
Q. Sure. An exam that's specifically tailored to determining whether an employee is able to perform a specific job.
A. I have been asked that question. Was it specifically under the premise of an occupational health exam, I'm not sure that I -- that I would answer one way or the other. I have been asked to see people; can they do something based upon a neurologic assessment.
Q. Have you been asked to do that by organizations other than Union Pacific?
A. I have not previously done work specifically for any other organization.

Page 15

Q. Have you ever been retained as an expert in occupational health in a legal case?
A. I have not.
Q. Authored any articles or participated in any presentations on occupational health?
A. I have not.
Q. Have you ever worked in the railroad industry?
A. I have not.
Q. Have you ever been out in the field observing railroad workers?
A. I have not.
Q. Do you belong to any occupational health professional organizations?
A. I do not.
Can I go back and add one thing for the record? I made the comment about not having done any other work for any other organization. I would qualify that I, in the past, have been an examiner for the NFL concussion program.
Q. Apparent sad news in that respect recently.
A. It is. It is disturbing to say the least.
Q. Explain to me your history or experience with the FMCSA medical guidelines.

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A. My history with them is that I was informed those are the guidelines used and that I would use when evaluating patients and whose file I was asked to review by Dr. Holland on behalf of the Union Pacific Railroad.
And other than that, I had -- other than that, I wasn't familiar with the guidelines prior to any of that work, nor have had ever any input into those guidelines, served on any of the committees that advise, et cetera.
Q. Okay. Did you review all of the background medical information regarding the FMCSA guidelines?
A. In reference to?
Q. At any point, during your providing these reviews for Union Pacific, did you go back and read the entirety of the medical background for the FMCSA guidelines?
A. I did not.
Q. Outside of doing these reviews for Union Pacific, have you ever done any examinations under the FMCSA medical guidelines?
A. I have not.
Q. I'm assuming then you're not a certified FMCSA medical examiner?

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A. I am not.
Q. Have you used the FMCSA medical guidelines to provide an opinion about whether an individual is able to perform a job in any other context, other than these reviews for Union Pacific?
A. I have not. Or I hadn't, I should say.
Q. You said that you were informed that these were the guidelines to be used.
Was that by Dr. Holland?
A. Yes.
Q. And what did Dr. Holland tell you?
A. Just that. When I first -- my recollection, when I first talked with Dr. Holland about doing these reviews, I was informed that the guidelines is what the Union Pacific Railroad used. And so I sought the guidelines out, and, as in this case, developed an opinion about the case and applied the guidelines accordingly.
Q. Did you research as to whether or not there were other guidelines that might be more appropriate?
A. I did not.
Q. Did you ask Dr. Holland at all as to why the FMCSA guidelines applied?
A. Not to my recollection.

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Q. Do you understand that the FMCSA guidelines were developed for the trucking industry?
A. I'm aware that the FMCSA is the oversight body that advises on safety for motor vehicle carriers, commercial motor vehicle carriers. That was my understanding.
Q. Are you aware of there being an indication in any of the FMCSA medical guidelines that it's appropriate to apply these guidelines to the railroad industry?
A. No. I only did what I was asked to do.
Q. Are you aware of any other railroad in the United States applying the FMCSA guidelines to their employees?
A. I don't have any knowledge about the processes or methodology of any other railroad.
Q. And have you done any other medical reviews for any other railroad?
A. I have not.
Q. You referenced this conversation with Dr. Holland about doing these reviews. Are you the person that Dr. Holland initially reached out to?
A. Well, I was initially reached out to by a physician colleague who, for lack of a better term, owned the contract between Union Pacific Railroad

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and the College of Medicine.
Q. And who was that?
A. Dr. Rod Markin, M-A-R-K-I-N.
Q. And do you recall approximately when that occurred?
A. I don't honestly remember exactly when it occurred. I think the first evaluation I may have done was in 2018, so I suspect sometime before that. Perhaps in 2017 at some time. I don't have -- I don't have exact recollection of when he reached out.
Q. And what was that discussion between Dr. Markin and yourself around the Union Pacific reviews?
A. He explained that there was a contract between Union Pacific and the College of Medicine faculty to on occasion do these reviews for the Union Pacific. And he reached out to me and said that Dr. Holland had reached out to him that there was a backlog of cases requiring neurological review, and Dr. Markin asked me if I would be willing to help.
Q. What was your response?
A. I explained at that time to Dr. Markin I would need to know how many of these cases. That I

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have a full-time job as a chief medical officer, and also had a practice that I was still attending to one day a week. And that if it wasn't onerous and the volume of files to be reviewed was not overwhelming, that I -- that I could potentially help.
Q. And were you helping in the context of doing reviews or were you coordinating all of the reviews amongst the staff?
A. The context of doing the reviews.
Q. Do you know how many neurologists or physicians were involved in doing these medical reviews for Union Pacific?
A. I don't.
Q. Is Dr. Markin still at Nebraska Medicine?
A. He is.
Q. And is he still the point for the contract between Union Pacific and Nebraska Medicine?
A. I honestly do not know that.
Q. Do you know if the contract is still in existence?
A. I believe it is.
Q. And what are the terms of the contract to the extent that you know?
A. I don't know the details of the

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contract or recall the details of the contract. I know that it stipulated a rate of compensation to the reviewers, but in terms of the rest of the details of the contract or the dates on which the contract was signed, I don't recall those details.
Q. And when you say "rate of compensation," are the doctors or neurologists who are doing the review -- are they paid directly?
A. They are not to my knowledge, and certainly I was not.
Q. Okay. And how is the payment exchanged?
A. There's -- well, I'll speak for myself. I can't speak for anybody else. So there was a development account that was established within UNMC in which the funds were deposited subsequent to file reviews, and those funds are -- can be used for things like CME, attending meetings, et cetera.
Q. Is CME Continuing Medical Education?
A. Yes.
Q. And what's the stipulated rate?
A. I believe the rate -- the rate, when I was doing these, I believe was $250 an hour.
Q. Are you still doing these reviews, Dr. Frankel?
A. I'm not.

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Q. And why not?
A. Priorities elsewhere that required too much time didn't allow me to do them.
Q. Fair enough.
Were there any other benefits that you received as part of doing these medical reviews for Union Pacific?
A. No.
Q. So, if I understand your testimony correctly, you have this initial conversation with Dr. Markin about the contract, and then it sounds as if you have a follow-up conversation with Dr. Holland?
A. Correct. He had Dr. Holland reach out to me.
Q. Okay. And how long was this conversation with Dr. Holland?
A. Oh, I don't recall.
Q. Leading up to your first medical review, did you only have that one conversation with Dr. Holland?
A. Correct.
Q. And it's during that phone call that he explained to you that they applied the FMCSA guidelines?

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A. That, and it was also conveyed in a cover letter -- cover letters that would accompany the files.
Q. How many medical reviews for Union Pacific do you think that you have done since that time?
A. Not a lot. I would say less than 20 and maybe, I don't know, closer to 15 or so, but not a lot.
Q. Out of those reviews that you have done, have you ever disagreed with Union Pacific's position?
A. Well, I don't know that I've ever been presented anything that stipulated a position on behalf of Union Pacific. I have provided my opinions and stood by those consistently.
Q. Have you ever provided the opinion that the FMCSA guidelines are not properly applied to railroad employees?
A. I have not.
Q. Have you ever -- in those 15 or so cases that you reviewed, did you ever provide the opinion that work restrictions were not necessary for an employee?
A. I don't recall the details of every case that I reviewed. I may have. I just don't recall.

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Q. Explain your process when you're doing one of these medical reviews for Union Pacific.
A. So could I ask for a little bit more clarity on what you're asking?
Q. Sure. How does the medical review come to you?
A. A file or files were sent to my -- delivered to my administrative assistant. Those files were then delivered to me. And when I could find time to review those files, which a single file may be reviewed over a period of time dependent upon my availability to do those file reviews, and the duration of which would be dependent upon the numbers of records.
I would -- I would review the records, take some notes in my head, and oftentimes I would begin typing the report as I'm reviewing just to document the piece of information that I felt would be germane in the report, and then finalize the report. That would be my process for reviewing the files and the reports thereof.
Q. So you would review the medical record that was provided to you by Union Pacific?
A. Correct.
Q. Did you ever speak to any of the

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individuals who you were doing -- who were the patient in the medical documentation?
A. I never spoke to the patient. There was never, ever a physician-patient relationship developed as part of the review of these records.
Q. And I'm assuming then you never spoke to any of the family members or close, you know, individuals to those patients?
A. I did not.
Q. Have you ever been hired as an expert in a legal proceeding?
A. I have not.
Q. In your report in this case there's a list of five or six questions that you were asked to answer.
Do you recall that?
A. I do.
Q. Were those kind of standard questions that Union Pacific provided to you to answer?
A. They were.
Q. And in this case I believe you were provided a job description for Mr. Carrillo.
Do you recall that?
A. I do not recall that. I believe his job was -- his job title was listed. I don't recall

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a job description.
Q. Dr. Frankel, do you have Exhibit Share up?
A. Well, I don't. You know, I logged into something, and I thought that that's what that was but I don't know.
MR. KASTER: Okay. Why don't we go off the record for a second.
(Discussion off the record.)
MR. KASTER: We can go back on the record, Jayne.
(Exhibit 68 marked.)
BY MR. KASTER:
Q. Dr. Frankel, I'm showing you what's been marked as Exhibit 68, and just let me know if you need me to blow something up. I'm not asking you about a specific section of it right now, but I'm going to scroll through this.
So this front page appears to be a letter to you from January 10th of 2018.
Do you see that?
A. I do.
Q. And it appears to be a request for a medical file review for Mr. Carrillo?
A. Correct.
Q. And then his job title is electrician,

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correct?
A. Correct.
Q. And is this the type of cover letter that you were referring to that you would receive as part of these medical reviews?
A. Yes.
Q. And then at the bottom of this letter it's from Dr. Holland.
Do you see that?
A. I do.
Q. And Dr. Holland has provided kind of a brief summary of Mr. Carrillo's medical condition; is that fair?
A. That's fair.
Q. And then Mr. -- or Dr. Holland provides some considerations in assessing medical safety risks.
Do you see that?
A. I do.
Q. And addressing "for employees in Safety Sensitive jobs," right?
A. Correct.
Q. Do you have any knowledge as to whether Mr. Carrillo's job was considered safety sensitive?
A. Well, the implication was he's in a safety

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sensitive job.
Q. Do you have any understanding of what the bases for that determination is?
A. As to whether there's potential for sudden incapacitation, whether it be on a -- related to awareness, consciousness or physical incapacitation, and the potential thereof to affect himself, others in the workplace, et cetera.
Q. Do you have any understanding as to how often Mr. Carrillo was working around moving trains?
A. I don't.
Q. Have you ever been to the location where Mr. Carrillo worked?
A. I have not.
Q. Have you ever observed electricians' work environment on the railroad?
A. I have not.
Q. Do you have any understanding of the risks for Mr. Carrillo's position should he have an incident of sudden incapacitation?
A. I don't know all the details, the specific details of his job, so I would say, no, I don't.
Q. And then here is a list of questions on this cover letter from Dr. Holland, right?
A. Yes.

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Q. And these are the list of sort of standard questions that Dr. Holland would send to you?
A. Correct.
Q. And there appears to be some attachments of medical records, a job description and a DVD of selected diagnostic studies.
Do you see that?
A. I do.
Q. Do you have any recollection of what these diagnostic studies were?
A. I don't -- I don't recall with certainty.
Q. Did you do any of your own independent research into diagnostic studies regarding Mr. Carrillo's condition?
A. I reviewed what was provided me with the file.
Q. And then we see -- I'm going to look at -- so there's this Bates number on the bottom which is a unique number for each page.
Do you see this 1723, Dr. Frankel?
A. I do.
Q. Okay. And I'll reference that page number so the record's clear because there's not separate page numbers on each of the documents.
And it appears, though, in this document

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that there's a job description for a locomotive electrician or maintenance technician.
Do you see that?
A. I do.
Q. And I'm going to just kind of scroll through this, and my question is: Does this appear to be the file that you received from Dr. Holland for Mr. Carrillo?
So I'll scroll through this now, and you tell me whether you think that this is the file.
A. Okay. (Examining document.)
Q. So, Doctor, this is a 71-page file. Does that appear to be the file you received from Dr. Holland for Mr. Carrillo?
A. I would say that I was able to catch Mr. Carrillo's name on several of the records and other records looked familiar and consistent with those that I reference in my report, so I would say, yes.
I will say that, in all honesty, I don't have a recollection of the job description.
Q. Outside of that potential job description, did you have any knowledge or understanding of Mr. Carrillo's job responsibilities?
A. I did not.

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Q. In this discussion with Dr. Holland that we were talking about earlier, did Dr. Holland point to -- you to any section of the FMCSA guidelines in particular?
A. No, not that I recall.
Q. Have you ever reviewed the entirety of the FMCSA medical guidelines?
A. I've only reviewed those parts applicable to files I was reviewing.
Q. Do you recall what parts of the FMCSA medical guidelines you reviewed as part of Mr. Carrillo's medical review?
A. I do.
Q. What did you review?
A. I reviewed the section on an unprovoked seizure.
Q. Any others?
A. Not to my recollection.
Q. And why did you decide to review that section?
A. Because that was my opinion relative to the condition of concern.
Q. And what did you base that opinion on?
A. My review of the historical information in the records.

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Q. From a factual perspective, what do you recall led you to believe it was an unprovoked seizure?
A. So when you say "factual," I'm assuming you mean what in the records led me to that opinion?
Q. Correct.
A. So there was -- there was history recorded by several individuals. The most noteworthy of which I believe was from the cardiologist he saw, and then subsequently Dr. Aguilar, the neurologist, of an unprovoked episode of loss of consciousness that was associated with clonic movements of his upper extremities, on being unresponsive at least one -- one mentioned, but perhaps upwards of five minutes.
The observation of those clonic movements, the observation of shallow respiration and snoring, the observation of tongue-biting and the observation of confusion afterwards.
Q. Anything else?
A. No.
Q. Do you recall that Mr. Carrillo's neurologist, Dr. Aguilar, did not make a conclusive diagnosis of an unprovoked seizure?
A. I do.

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Q. Do you believe Dr. Aguilar has a closer understanding of Mr. Carrillo's medical condition than you do?
A. I would not opine on what Dr. Aguilar's understanding of Mr. Carrillo's medical condition was.
Q. Do you agree with me that Dr. Aguilar at least saw Mr. Carrillo in person on multiple occasions?
A. I would agree.
Q. And that was something you had not done, right?
A. That's correct.
Q. Explain your rationale for why you did not conclude that syncope was a possible diagnosis for Mr. Carrillo.
A. In my opinion, the totality of and the circumstances related to the episode of loss of consciousness, inclusive of those things I highlighted previously, I'll repeat them: The precipitous loss of consciousness, the clonic movements of the arms that were reported, the alleged duration he was out, the confusion afterwards, the tongue biting.
Those events all taken in aggregate led me

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to believe that the most likely cause of the event was an unprovoked seizure.
Q. Is Gabapentin an anti-convulsant drug?
A. It is.
Q. Can stopping an anti-convulsant drug provoke a seizure?
A. It can.
Q. Did you understand from the records that Mr. Carrillo had stopped taking Gabapentin for a few days before this incident?
A. I did, and it was my understanding it was -- it was perhaps five days ahead of this, if I remember correctly.
Q. And so did the fact that Mr. Carrillo had stopped taking Gabapentin affect your opinion at all?
A. It did not.
Q. Why not?
A. First and foremost, withdrawal seizures from Gabapentin is uncommon. And if withdrawal seizures related to Gabapentin occur, there are typically other withdrawal symptoms, and oftentimes it may occur in the context of other substances like alcohol.
And in this case there was no mention

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anywhere in any of the reported history that there was reference to any of these other symptoms such as agitation, confusion, tremulousness or anything like that that would be otherwise consistent with a drug withdrawal state.
And, furthermore, the half-life of Gabapentin being what it is, you would expect, if somebody were to have withdrawal seizures, it would typically occur within the first couple of days most likely. Not that it couldn't occur a few days later, but I think that's highly unlikely. And absent any other withdrawal symptoms, I think it's highly unlikely that that's what occurred.
Q. In your experience as a neurologist, when somebody wakes up suddenly from sleep and stands up quickly, does that pose a risk of syncope or fainting?
A. I suppose it could.
Q. Why?
A. There may be other underlying medical conditions.
Q. Why would it pose that risk?
A. Well, if somebody has -- let's say somebody were to stand up for -- quickly for any reason, if they're dehydrated, if they're anemic, if

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they have a cardiac output issue, and, you know, standing up quickly when you -- the rate of rise exceeds the rate of blood getting to the brain, it could predispose somebody to passing out.
Q. Do you recall from the records that Mr. Carrillo had been sick for a few days leading up to this incident?
A. I don't recall that.
Q. Would that impact your diagnosis at all?
A. It might have, but I don't recall that being an issue.
Q. If Mr. Carrillo had been ill and experiencing diarrhea and vomiting, would that impact your opinion?
A. Well, that information was not in the records that I reviewed. So if you're asking me to hypothesize here could that, it's possible.
Q. Why?
A. Well, I think I referenced that dehydration could predispose somebody to a syncopal event, fainting. And if somebody is ill with vomiting and diarrhea, that can predispose them to dehydration.
Q. Dr. Frankel, I am showing you what has been marked as Exhibit 69.

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(Exhibit 69 marked.)
BY MR. KASTER:
Q. Do you see that on your screen?
A. I do.
Q. This appears to be a letter to Dr. Holland on May 19th, 2018. And on the bottom, or last page, page 4 of 4, is that your signature?
A. Yes, it is.
Q. Does this appear to be your report regarding Mr. Carrillo?
A. Yes, it does.
Q. And in this first paragraph here there is a sentence. It says "I have reviewed the employee's records and job description provided by your office and will address your questions at the end of this report."
Do you see that?
A. I do.
Q. Does that refresh your recollection at all about seeing Mr. Carrillo's job description?
A. I must have seen it. I just don't have independent recollection of seeing that at this point. It's been a long time ago.
Q. And then you have this "Review of Records" section that kind of overviews what information you

saw in Mr. Carrillo's medical records; is that fair?
A. Yes.
Q. And then there's a section in bold on page 3 of 4 that says "Determining Health-related safety risks - for employees in safety critical positions."
Do you see that?
A. I do.
Q. Is that a section that you copied from Dr. Holland's letter?
A. I don't recall copying that from Dr. Holland's letter. I used -- I used a template that was shared with me from another physician elsewhere as a sample report when I was first introduced into doing these reports and used that template as a form for completing my reports.
Q. And who did the template come from?
A. I don't recall.
Q. And when you say you got it from somebody "elsewhere," was that within Nebraska Medicine?
A. No. I believe it was from another physician with whom Dr. Holland had worked. I just don't recall who that physician was.
Q. How did you know to reach out to this physician about a template?

A. I did not reach out to the physician. Dr. Holland provided it to me as an example of the form of the reports that had been submitted by someone else.
Q. And so when you put in this report "For individuals who work in a safety critical position at Union Pacific, such as this employee," you don't have any independent knowledge as to why Mr. Carrillo is considered to be in a safety critical position?
A. I don't. I was -- the file was submitted under the basis that his job is in a safety critical position, and I reviewed the file and applied the guidelines I was asked to apply.
Q. It says here at the bottom of this first paragraph: "If based on an individualized evaluation, HMS" -- so I believe that's Health & Medical Services at Union Pacific -- "determines a worker has a moderate to high risk for sudden incapacitation, then HMS will give the person medical work restrictions that will be ongoing and will remain in place as long as unacceptably high risks exists."
Do you see that?
A. I do.

Q. Do you recall in your medical reviews for Union Pacific whether you ever indicated that an employee has a low risk for sudden incapacitation?
A. I may have.
Q. Can you give me any examples?
A. I don't recall independently any examples.
Q. When you say "moderate risk of sudden incapacitation," what does that mean to you?
A. That there is a significant likelihood of a recurrence.
Q. Can you tell me with a moderate risk what the risk percentage is?
A. I don't have a specific risk percentage. In general in this case -- in this case I made a judgment based upon the condition.
Q. What do you mean you "made a judgment"?
A. Well, again, my opinion was this individual had an unprovoked seizure. There's a -- what I would consider, a significant risk for recurrence certainly in the first two years, but upwards of the first five years, and that risk, depending on, could be anywhere from 20 to 40 percent.
The most likely period of recurrence is in

the first two years, and in some cases could have been within the first three months, but certainly there's extended risk up until that five-year window.
Q. Where do you derive the 20 to 40 percent risk percentage from?
A. There have been a number of studies, you know, over the years that have looked at individuals with single unprovoked seizures, and -- and that's where, you know, those figures come from.
Q. Can you tell me any of the studies?
A. I don't recall the specifics. They're studies I've read over time. I can't cite the authors.
Q. Do you recall reviewing any of those studies at the time that you did the medical review for Mr. Carrillo?
A. I did not.
Q. I don't believe you say anywhere in your report to Dr. Holland about a percentage risk of recurrence?
A. I did not. I believe it's mentioned in the guideline, and I felt that the reference therein as to the percentage was certainly within the ballpark of what other studies had

indicated.
Q. Do you believe the FMCSA guidelines references a specific percentage or range of percentages?
A. I have the guideline in front of me. It references estimated to be 36 percent within the first five years following the seizure.
Q. What section of the guideline do you have in front of you?
A. I have "Single Unprovoked Seizure." It's page 148 of the guidelines that I reviewed.
Q. And why do you have that single page?
A. Well, it's the guidelines that I applied to this case.
Q. Do you recall pulling that page out of the entire FMCSA medical guide?
A. I pulled it specifically out of the guide that I might be asked about it today.
Q. It wasn't in your file somewhere?
A. It was not in my file anywhere.
Q. Does the cause of a -- the cause of a seizure impact the risk of recurrence percentage?
A. Well, in this case there was no identifiable cause, and, hence, unprovoked. If -- generally speaking, if there is an abnormality on an

imaging study, like a CAT scan or an MRI and/or an EEG, which is the electrical recording of the brain's electrical activity -- if there is an abnormality that is discovered during the course of the evaluation, the likelihood of recurrence would be at the higher end of the range.
And, that being said, the identified potential risk recurrence even in an unprovoked seizure may still fall within that range.
But to your question: If there's identifiable cause, as I've referenced, that risk of recurrence may certainly be higher.
Q. This range of risk of recurrence, is that over a lifetime?
A. The range I'm referencing is really within the first five years after the indexed event. If a person remains seizure free for five years off treatment, that risk following an isolated unprovoked seizure is diminished significantly.
Q. Is it diminished after the first year if the person is seizure free?
A. Not from a statistical standpoint.
Q. What do you mean by that?
A. Well, again, this range of percentages is, you know, a statistical estimate given cohorts of

patients studied and what their outcomes were.
And so it doesn't mean that if you go one year seizure free after an unprovoked isolated seizure that you're still not at risk for a subsequent seizure in the next year. That would not be true; you're still at risk.
Does the risk of subsequent seizures diminish the further you are from the indexed event? At a certain period of time that's true.
Q. Do you agree with the idea that every human being has some risk of suffering a seizure?
A. I would not say that every human being is at risk of suffering a seizure. I would -- every human being is at risk of potentially succumbing to some incident that could potentially result in a seizure, but I don't believe that every human being individually is at risk just de novo. Certainly there are some that are at risk for a variety of different reasons.
Q. Can you give me an opinion about what you believe Mr. Carrillo's risk of suffering a seizure is in the next year?
A. In the next year?
Q. Correct.
A. So in the next year from when?

Q. From today.
A. So I don't know anything about Mr. Carrillo's clinical history beyond what I reviewed in the file, so I don't know that I could opine on what his risk is in the next year.
Q. What about a year after this event, what's his risk of recurrence of a seizure within the first year?
A. I think -- well, a year following the event I think his risk is pretty high, because I said it could be anywhere from 20 to 40, and I think there are even some estimates that suggest it could be upwards of 50 percent within the first two years. So I would think that he would still be at significant risk within that first year.
Q. What if Mr. Carrillo did not have a seizure within the first year?
A. One might say, well, his -- his risk may be diminishing, but he still has risk looking at, you know, the time frame that I reference as to when risk is highest certainly in the first two years following an indexed event, but that risk does not go away and remains present at a significant level really through the first five years.
Q. Can you give me a percentage risk

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after one year if Mr. Carrillo didn't have a seizure?
A. I can't give you an absolute percentage.
Q. How did you come to five years?
A. In terms of --
Q. Mr. Carrillo's risk. You've referenced five years kind of multiple times.
A. Well, you know, yeah, the studies have been done, you know, where you look at the relative risk, you know, over various time intervals.
And without question a person who is seizure free, off medication for a period of five years has a relatively low risk at that point of having a recurrence. It's not zero, but it's relatively low. And so that's sort of the standard in how this is viewed.
Q. Can you give me any examples of any studies that support this five-year time frame?
A. There are -- there are studies out there. I can't reference the specifics or the specific authors.
Q. Is that five-year time frame referenced in this section of the FMCSA guideline that you're looking at?
A. It is.

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Q. What does it say?
A. Would you like me to read this?
Q. Sure.
A. All right. This is where I'll start: "While individuals who experience a single unprovoked seizure do not have a diagnosis of epilepsy, they are clearly at a higher risk of having further seizures. The overall rate occurrence is estimated to be 36 percent in the first 5 years following the seizure. After 5 years, the risk for recurrence is down to 2 to 3 percent per year for the total group."
"Following an initial unprovoked seizure -- well, that speaks to a driver specifically, but that's -- that's where it's referenced.
Q. And that's 36 percent over this entire span of five years, right?
A. Correct.
Q. Doctor, then I want to look at your answers to the questions that Dr. Holland posed.
Do you see that on your screen?
A. I do.
Q. Okay. Did you have any discussions with Dr. Holland about Mr. Carrillo's medical condition?

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A. I did.
Q. Before or after you wrote your report?
A. It would have been after I completed my file review and drafted my report. I likely had not sent it to Dr. Holland at that point in time.
Q. And what was the discussion about?
A. Well, it was not uncommon for Dr. Holland to just want my opinion. I provided my opinion, and those opinions are reflected in my report.
Q. Did Dr. Holland communicate his opinion at all to you?
A. I don't recall what Dr. -- if he did or not. If he did, it would have been his opinion, but that wouldn't have swayed my opinion.
Q. So if there's --
A. If it was -- if it was -- if it was in -- contraire to my opinion.
Q. If there's similarity between your opinion and Dr. Holland's opinion, your contention is that's a coincidence?
A. Well, I don't know that it would necessarily be a coincidence. It may be coincidental, but I think that there is -- my opinion was formed independent of Dr. Holland's opinion, and the fact that he arrived at a similar

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opinion would suggest, well, he has a level of understanding and knowledge that allowed him to formulate an opinion that, I guess, coincidentally was -- was similar to mine.
Q. Is Dr. Holland a neurologist, as far as you know?
A. I don't believe Dr. Holland is a neurologist.
Q. Did you see anywhere in Mr. Carrillo's medical file that his treating physicians came to a conclusive diagnosis of isolated unprovoked seizure?
A. Well, no. I didn't see anything that stipulated it was conclusive. It certainly was in his impression.
Q. In the differential diagnosis?
A. Correct.
Q. As a possibility?
A. Correct.
Q. Did you find anywhere in Mr. Carrillo's medical records that his treating doctors said the most likely diagnosis was an unprovoked seizure?
A. I don't recall that wording.
Q. Question 3 asks you: "Do guidance documents from FMCSA, including the Medical Expert Panels and Medical Review Board provide good

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evidence-based risk assessments about future risks for sudden incapacitations from these conditions? Are the conclusions of these FMCSA reports consistent with the best evidence from the medical literature on these topics?"

And you answered "Yes," right?

A. I did.

Q. Did you look at the Medical Expert Panels and Medical Review Board documents?

A. I did not look at those documents specifically. It was my understanding that their documents and the opinions that flow therefrom are what support the guidelines.

And the -- certainly the comments relative to the potential risk of seizure recurrence I assumed to be a reflection of those opinions.

Q. So your answer "yes" was simply based upon the fact that the guidelines exist?

A. And the reference to the risk which would be consistent with my own knowledge.

Q. But you didn't look, actually look at the underlying medical rationale or data that apparently support the guidelines?

A. I didn't.

Q. In these medical reviews for Union Pacific

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have you ever answered that question "no"?

A. I don't recall.

Q. Have you ever said that additional tests or evaluations would provide clarity, Question 2?

A. I don't recall.

Q. Question 4 is: "Using the risk assessments and recommendations of the FMCSA guidance documents, as well as other relevant scientific evidence, does the employee have low or moderate to high risk for sudden incapacitation?"

Do you see that?

A. I do.

Q. Did you rely on any other relevant scientific evidence to answer this question for Mr. Carrillo?

A. I didn't. Again, as I said previously, the reported risk of recurrence following an indexed event like this, the risk being what it is in my opinion is a moderate to high risk.

Q. I think I asked this before but I'll just make sure.

Have you ever authored the opinion for Union Pacific that somebody has a low risk of sudden incapacitation?

A. I may have. I just don't recall.

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Q. Question 6: "Is it reasonable to apply risk assessments and recommended work restrictions from the FMCSA guidance documents?" You answer "yes" to that question.

Do you see that?

A. I do.

Q. What was the basis for that opinion?

A. My understanding of the question was it was for individuals in safety sensitive positions that work for the Union Pacific Railroad, that the guidance provided in the -- in the guidelines would be applicable, if that's what they choose. I -- it sounds and it seemed reasonable to me that that's what they do.

I mean, that's their -- that's their method, and so I answered in that vein: Relative to persons in safety sensitive positions that they choose to use the guidelines, and so I responded in the affirmative.

Q. Have you ever offered the opinion "no" to that question?

A. I don't recall.

Q. There's a question at the end of this, or a phrase at the end of this question that says "where sudden incapacitation would pose a

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significant risk for substantial harm to the worker or others?"

Do you see that?

A. I do.

Q. What's the specific significant risk for substantial harm for Mr. Carrillo's position?

A. Well, again, I don't -- I don't recall the exact details of his job description, and I don't recall, you know, what type of machinery he might have been working around, what the yard looked like, you know, what kind of driving he did, who he was with, who he was around, et cetera.

But in general terms we often advise patients who have an episode or episodic loss of consciousness to avoid situations in which that type of circumstance can be potentially dangerous to themselves or others.

So it's not an uncommon recommendation given to patients not knowing what their circumstances might be at any given time if they were to have a sudden episode of impaired awareness or a loss of consciousness.

Q. So you don't know the specific risks of substantial harm that might result if Mr. Carrillo had an incident of sudden

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incapacitation?
A. I'm saying I don't -- I don't have specific knowledge of different circumstances therein, but certainly there may be circumstances in which such could occur. I don't know what the specifics of those relative to him might be, but certainly that could be a possibility depending on what he's doing at any given time.
Q. So why didn't you say that in your answer as opposed to "yes"?
A. I don't have a response to that, Counselor, other than I said "yes." I -- you know, it seemed reasonable that advising, like I described, was reasonable, and I simply answered "yes."
Q. Have you provided the opinion that applying the FMCSA guidelines is appropriate in any other industry besides the railroad industry?
A. I have not.
Q. Have you ever been asked to give the opinion or apply the FMCSA guidelines in the motor carrier industry?
A. I have not. Again, only -- this is what the Union Pacific Railroad does, and that's what I did.

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Q. And I think you said this, but just to make sure, you've never provided a similar opinion to any other railroad?
A. I have not.
MR. KASTER: Why don't we take a short break and go off the record, Jayne.
(Recess taken from 10:22 to 10:35 a.m.)
BY MR. KASTER:
Q. Dr. Frankel, we're back on the record after a short break.
Do you understand you're still under oath?
A. I too.
Q. Anything you want to change or add about your earlier testimony?
A. I don't think so.
Q. Okay. I just have one follow-up question, Doctor.
Outside of this one incident that we've been talking about today, did you observe anything in Mr. Carrillo's medical records that would prevent him from performing his electronic technician or electrician job title?
A. Well, I didn't -- you know, I did not look at the records with the intent of offering an opinion as to fitness-for-duty, so I'm not sure I

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can opine on that.
Q. Okay. Anything else in his medical records that you believe warranted any type of work restrictions?
A. Again, I was asked to opine on a specific incident and cause thereof, and I applied the FMCSA guidelines, as I was asked to do, that would be consistent with that condition, and that's what I did.
Q. Okay. Well, I'm trying to make sure, Doctor, that if you're going to testify in this case, that your opinion is going to be limited to the issue we've talked about.
A. It's limited to this case.
Q. Okay. But limited to the medical opinion about this one incident and seizure?
A. Correct. I mean, that's -- I mean, I'm not aware that I was asked to opine on anything else.
Q. Okay. And you're not intending to opine on anything else?
A. Not in -- no, sir.
MR. KASTER: I have no other questions at this time, Doctor. I appreciate your time today.
THE WITNESS: Thank you.

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MR. ORTBALS: I have no questions. Doctor, do you want to waive signature or read and sign?
THE WITNESS: I'll waive.
(WHEREUPON, the deposition of DR. HARRIS A. FRANKEL was concluded at 10:37 a.m.)
***

REPORTER'S CERTIFICATE

STATE OF MINNESOTA)
)SS.
COUNTY OF HENNEPIN)

I hereby certify that I reported the remote deposition of DR. HARRIS A. FRANKEL on December 17, 2021, via Veritext Virtual Videoconference, and that the witness was by me first duly sworn to tell the whole truth;

That the testimony was transcribed by me and is a true record of the testimony of the witness;

That the cost of the original has been charged to the party who noticed the deposition, and that all parties who ordered copies have been charged at the same rate for such copies;

That I am not a relative or employee or attorney or counsel of any of the parties, or a relative or employee of such attorney or counsel;

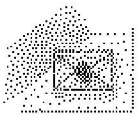
That I am not financially interested in the action and have no contract with the parties, attorneys, or persons with an interest in the action that affects or has a substantial tendency to affect my impartiality;

That the right to read and sign the deposition by the witness was waived.

WITNESS MY HAND AND SEAL this 21st day of December, 2021.

Jayne M. Seward
Notary Public, Hennepin County, Minnesota
My commission expires January 31, 2025

Exhibit QQ



John P. Holland/UPC
01/22/2018 01:47 PM

To "Frankel, Harris A" <harris.frankel@unmc.edu>
cc "Deb A. Gengler" <DAGENGLE@UP.COM>
bcc
Subject Re: Files

Harris

Glad you are doing better.

I think Deb will follow-up with Nikka regarding these cases

Thank you again for helping us with these reviews

John

From: "Frankel, Harris A" <harris.frankel@unmc.edu>
To: "Deb A. Gengler" <DAGENGLE@UP.COM>
Cc: "John P. Holland" <JPHOLLAN@up.com>
Date: 01/19/2018 09:32 PM
Subject: Re: Files

This email originated from outside of the company. Please use discretion if opening attachments or clicking on links.

Hi,
Back on grid after being out with food poisoning.
Thanks for your accommodation.
H

Sent from my iPad

On Jan 17, 2018, at 9:19 AM, Deb A. Gengler <DAGENGLE@UP.COM> wrote:

Non-UNMC email

Dr. Frankel,

I know Dr. Holland has placed a call with you. And I have a call into Nikka. We have reviewed our request and now will need for you to review only**Redacted** In February we will ask you to review the file on Joseph Carrillo as we know that he is having more testing so we will provide you with additional records.

Please feel free to call me at 712-490-7748.

Thank you,

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

Exhibit RR

- -

Joseph Carrillo, Case No. 3:21-cv-00026-FM

Plaintiff,

v.

Union Pacific Railroad Company,

Defendant.

- -

REMOTE VIDEOTAPED DEPOSITION OF
DR. JOHN HOLLAND

DATE: November 17, 2021

TIME: 9:09 a.m. PST

PLACE: Veritext Virtual Videoconference

REPORTED BY: Jayne M. Seward, RPR

Job No: 4890881

* * APPEARANCES * *

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Also Present: Kraig Hildahl, Videographer

I N D E X

REPORTER'S NOTE: All quotations from exhibits are reflected in the manner in which they were read into the record and do not necessarily indicate an exact quote from the document.

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P R O C E E D I N G S

THE VIDEOGRAPHER: We are going on the record at 9:09 a.m. Pacific time on November 17th, 2021. This is Media Unit No. 1 in the video recorded deposition of Dr. John Holland taken in the matter of Joseph Carrillo versus Union Pacific Railroad Company filed in the US District Court for the Western District of Texas, El Paso Division, Case No. 3:21-cv-00026-FM.

This deposition is being held remotely. My name is Kraig Hildahl, and I'm from Veritext Legal Solutions and I'm the videographer. The court reporter today is Jayne Seward, also with Veritext.

Will counsel please identify themselves for the record.

MR. KASTER: I'm Jim Kaster for the plaintiff.

MR. ORTBALS: Bob Ortbals for defendant, Union Pacific.

MR. KASTER: Why don't we go ahead and swear the witness, please.

DR. JOHN HOLLAND,

duly sworn, was examined and testified as follows:

THE REPORTER: Thank you, sir.

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EXAMINATION

BY MR. KASTER:

Q. Dr. Holland, I know you have been deposed before. I have deposed you previously in related matters.

I will just ask you: You've been placed under oath here today. What does that mean to you?

A. It means I'm to tell the truth.

Q. You were the chief medical officer of Union Pacific Railroad through December of 2019; is that correct?

A. Yes.

Q. My understanding is that you retired in that month, December of 2019, correct?

A. Yes, correct.

Q. You were in charge of the Union Pacific fitness-for-duty program; is that correct?

A. It is partly correct. I was -- as chief medical officer, I was directing the medical aspects of the program. There were other administrative and nursing aspects that I didn't administer.

Q. Would it be fair to say that you were the final decision maker with respect to disqualifying employees from work or imposing certain work restrictions?

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MR. ORTBALS: Objection to form. You can answer.

THE WITNESS: No. No, I don't -- I don't think that was exactly my role. My role was I was -- I provided the medical guidance to the doctors, including myself, and the associate medical directors in making the fitness-for-duty determinations, and the individual associate medical directors were authorized to make the final decision consistent with that guidance.

BY MR. KASTER:

Q. How many employees do you think you imposed work restrictions on whom were then unable to return to work?

A. I don't know the number.

Q. Hundreds?

A. Yes, hundreds.

Q. We're here today to talk about Joseph Carrillo. Are you aware of that?

A. Yes.

Q. And Mr. Carrillo had what job at Union Pacific?

A. He was a diesel electrician or a locomotive electrician in the locomotive shops.

Q. How long did he work in that job? Do you know?

A. From looking at the files, I believe he was hired in 2012.

(Telephone ringing.)

Q. Doctor, I'm going to ask that any documents or instruments that are being used by you to testify here today be disclosed. Can you --

A. I -- no, I'm not. I just had my phone next to me. I turned the ringer off, but I'm not looking at any documents.

I'm not sure what you asked. What I used to prepare or what I have in front of me?

Q. No. I'm -- I heard something going off, and I want to make sure that you're testifying based upon your recollection and the documents that we review and not on -- on the basis of anything that I cannot see.

A. Yes. I have no documents or devices in front of me except for this screen for our call.

Q. Do you have Mr. Carrillo's case in mind?

A. Yes.

Q. What happened to Mr. Carrillo?

A. In June -- on June 30th, 2017, Health and Medical Services, the fitness-for-duty nurses, got a notification from his supervisor that he'd been off

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work for four days, and he'd notified the supervisor he'd had a loss-of-consciousness event and he was concerned it might be a seizure. And the supervisor notified him that he'd have to have a fitness-for-duty evaluation prior to return to work, and then notified Health and Medical Services, and our nurses contacted him.

So that was -- so it was a loss-of-consciousness event that he reported to his manager, and then Health and Medical Services started the fitness-for-duty evaluation.

Q. Are you testifying under oath here today that Mr. Carrillo described what happened to him as possibly being a seizure?

A. Yes, that's what I believe the -- or our department notes show, based on his conversations with our fitness-for-duty nurse.

Q. You are not a neurologist; is that correct?

A. That's correct.

Q. You never examined Mr. Carrillo yourself, correct?

A. Correct.

Q. You are an occupational doctor; is that correct?

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A. Yes, occupational medicine.

Q. Do you feel qualified to render a diagnosis yourself about Mr. Carrillo's neurological condition?

A. The -- you know, I -- being -- being a physician and -- and studying these things and being interested in loss-of-consciousness events at the railroad, I do feel -- feel qualified in making a determination about what's a most probable diagnosis.

Q. You're aware of the fact that his own doctor, Dr. Aguilar, rendered a differential diagnosis and was unable to pinpoint precisely what happened. You're aware of that?

A. Well, I -- I don't agree with that statement entirely. He did -- in his notes I'm familiar with, he always had a differential diagnosis. He did describe both subjective information that was told to him by the patient, Mr. Carrillo, and the results of his physical exam and lab tests, so he had a lot of information.

While he had the differential diagnosis, it is notable that he had placed work re- -- or he -- functional restrictions on him from driving and other activities that might cause him harm if he

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had a seizure. So -- so he did consider that a possibility.

Q. How long was that restriction in place for? Do you recall?

A. He -- he saw him three times. The first two times, which was August -- from August 7th and September 7th, he explicitly stated the restriction.

And then in his last note he didn't -- he didn't comment on restrictions. So he didn't necessarily remove them, but he didn't -- he didn't cite them again in that note. He just didn't comment on it.

Q. You sent this to a Dr. Frankel at the University of Nebraska, Omaha, medical hospital; is that correct?

A. Yes.

Q. Why?

A. Well, Dr. Charbonneau, who was the associate medical director who reviewed the case, thought it would be a good idea to get a -- to get a what we call medical file review. We want to do this when there's a lot of information, and we want to be sure we're interpreting it correctly in terms of diagnosis.

So one of the reasons we sent it to him --

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two reasons really: To get his opinion on what the most likely diagnosis was, based on the information we had gathered from Mr. Carrillo's doctors; and, second of all, to give us his opinion about whether this might convey a low or moderate to high risk of sudden incapacitation and how that would fit with guidance from the Federal Motor Carriers Safety Administration, that's abbreviated FMCSA, in terms of his risk for sudden incapacitation events.

Q. Did you consider that to be an independent opinion?

A. It was -- it was an opinion of our consultant, so it's clear that Dr. Frankel was giving an opinion to us, but we -- we asked him to give his medical opinion based on what he thought the facts were.

So I think it's a -- I think it's his honest opinion. We didn't ask him to shape the opinion one way or the other. I'm not sure how you would use "independent" or how you -- you're defining "independent" to be in this context.

Q. "Independent" means that you didn't try to put your thumb on the scale one way or the other, and no one else did either.

A. That's correct. We -- I didn't try to put

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my thumb on the scale or influence his decision. I really wanted his best answers to the question, and then that would provide guidance to us in how we were going to make the fitness-for-duty determination. And we --

MR. KASTER: Dr. Holland, I think we've lost your video.

THE WITNESS: Okay.

BY MR. KASTER:

Q. What is the relationship, contractual or otherwise, between Union Pacific and the University of Nebraska, Omaha, hospital, as you understood it?

A. Well, first of all, I mean, I think the -- the correct title for the group now, which is both the hospital and the medical staff, is Nebraska Medicine, and it's the academic medical center for the University of Nebraska.

At the time we sent this review to Dr. Frankel, Union Pacific had a consulting contract and agreement with the University of Nebraska Medical Center to provide consultation to us, including these type of case reviews, plus other consulting that we might need on an hourly basis, and we arranged that through this contract.

Q. So there was in existence a physical

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contract between Nebraska Medicine and Union Pacific?

A. Yes.

Q. I take it you have seen that contract?

A. I have.

Q. Did you negotiate the contract?

A. No. The Union Pacific lawyers did.

Q. So at the time of this review by Dr. Frankel he was, as an employee of Nebraska Medical, under a contractual obligation to do this review; is that correct?

A. Well, the -- not exactly. I mean, there -- there was -- we would request, I don't know, through the -- we work through one of the vice chancellors. We would request through his office that we wanted a review done or somebody that could do reviews for us on neurologic cases, and then he would work with the chairman of the department to find a staff member or several staff members that would agree to do them.

So the physicians weren't required to do them if they didn't -- if they didn't want to, but --

Q. They weren't required?

A. No. I mean, I think the physicians could

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have declined, and said, you know, "This is not" -- and say "This is the kind of thing I'm not comfortable doing," but they were asked, you know, through those channels, through their chairman, if we were -- we just made the request to the vice chancellor, and he found us physicians in that specialty with that competency that had agreed they would participate and do reviews.

Q. So he could turn down a new file or case at any time?

A. I -- I -- well, I don't know. I mean, potentially what would happen usually is -- is if they felt they didn't have time or they -- you know, they had -- there was a particular -- they had some other, you know, work interference that they think -- thought they wouldn't be able to do it. That was the only time that I recall people turning it down.

They didn't -- they didn't tend to, like, review the case and say then "This is one I don't feel comfortable with." It was more sometimes in terms of timing they said they couldn't do them.

Q. Did it matter to your restrictions that this was an event of seizure, as opposed to an event of syncope, for example?

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A. Well, I -- I think it -- it sometimes matters. I mean, we wanted to get as clear as we can with the diagnosis because many of the guidance documents we look at, like the FMCSA guidance documents, are diagnosis related.

And so, yeah, it -- it does matter what the diagnosis is in terms of, you know, how we would proceed with a fitness-for-duty determination.

Q. So is it your view that Mr. Carrillo is an epileptic, by the way?

A. No.

Q. Have you, yourself, the qualifications and credentials and background and experience to say that this was an event of seizure, as opposed to an event of syncope?

A. I -- well, I -- I do have qualifications as a physician. You know, I have general training in this area, and it's an area I've studied both independently looking at journal articles and also talking and working with our consultants. So I think I have some expertise in this in that regard.

Q. And you say you can do that without even examining or talking to Mr. Carrillo, right? Is that your view?

A. Well, I -- I think it -- I think you can

do that. I mean, if you have adequate records from physicians and specialists that did examine him and take appropriate diagnostic tests, and that you can form an opinion based on the information that's provided in those records without doing an interview or an exam.

MR. KASTER: I'm going to mark what I think will be Exhibit 38. Let me share my screen here. Bob, this is Bates No. -- let's get the Bates number here at the bottom. You see that it is 1987 through, I believe, 1988 is Exhibit 38.

(Exhibit 38 marked.)

BY MR. KASTER:

Q. Can you see this document?

A. Yes, I can.

Q. Do you recognize the email address from Deb Gengler at UP.COM?

A. Yes.

Q. Who is Deb Gengler?

A. Deb Gengler is a occupational health nurse, and she was the -- she was in a parallel position with me in Health and Medical Services, and she was in charge of the fitness-for-duty nurses and also some other programs.

Q. Do you recognize this email? It looks

like you were copied on the email. Do you see that?

A. Yes.

Q. This email actually contains also at the bottom -- as you can see, as is the case with many emails, there's more than one on the page.

A. Yes.

Q. It looks like Dr. Frankel is expressing some disappointment at the number of cases that he is being asked to review.

Do you see that?

A. Yes, he -- he specifically says: "I knew, John" -- that would be me -- "said there was one 'priority' file," and "I didn't expect 6." So he is expressing that wasn't what he was expecting to get.

Q. And he says here: "I tried to be transparent from the outset that I have a full-time job in my role as CMO, not to mention doing a day clinic every week."

"You will need to let me know the expected timeline for these 6 new files. I am hopeful we can come to some mutual understanding here."

Did you talk to Dr. Frankel about his email?

A. Yeah, I -- I -- I think I did. I'm not

sure. I mean, that was three years ago. I don't know.

Q. Did he ever express to you that he didn't want to do this review?

A. Not that I recall.

Q. Which of the cases was the so-called "priority" file? Do you recall?

A. No, I don't.

Q. Was Mr. Carrillo the priority file? Do you recall?

A. No. I said I -- I don't remember.

Q. It's possible he was the priority file?

A. Possibly.

Q. I'm going to mark this as Exhibit 39.

(Exhibit 39 marked.)

BY MR. KASTER:

Q. It's an email dated January 22nd of 2018, to Dr. Frankel regarding certain files. Do you recall that?

A. Well, I can see it here. I don't recall it, but I -- this is my email.

Q. You call him "Harris"?

A. Yes.

Q. I take it he calls you "John"?

A. Yes.

Q. He says "Glad you are doing better. I think Deb will follow-up with Nikki" -- "Nikka regarding these cases."

Did "these cases" include Mr. Carrillo's case?

A. You know, I don't know. It -- it didn't list them down below and -- or they were redacted. I don't know that they were listed. So I'm assuming it did or we wouldn't be talking about this email, but I don't know.

Q. It says here at the bottom, January 17th, 2018, at 9:19 a.m., and it says "Dr. Frankel, I know Dr. Holland has placed a call with you. And I have a call into Nikka. We have reviewed our request and now will need for you to review only" -- this is redacted then. "In February we will ask you to review the file on Joseph Carrillo, as we know he is having more testing, so we will provide you with the additional records."

Was the additional testing ever done, do you know?

A. Some of it, yes.

Q. Was Mr. Carrillo scheduled at some point to go to the Mayo Clinic? Do you recall?

A. Yes, that was the information we got on

him, yeah, that he was going to go to the Mayo Clinic, and also go to his own -- Dr. Aguilar, his own neurologist, again.

Q. Do you know if he ever did that?

A. Yes. I know he went to see Dr. Aguilar again on January 25th, 2017, and then we got notice later that he was not going to the Mayo Clinic, or did not go and was not intending to go.

Q. Well, this is after the visit with Dr. Aguilar because this is January of 2018. You see that, right?

A. Yes. So I misspoke. It was January 25th, 2018, that he saw Aguilar again, so that was after this.

Q. He was unable to go to the Mayo Clinic because he didn't have the money. Do you recall that?

MR. ORTBALS: Objection to form, calls for speculation. You can answer.

THE WITNESS: I -- I -- all I knew was I saw an email and a note. I don't recall now if it was from him or -- I mean, in my review of this case -- an email in about April that said he's no longer going to the Mayo Clinic, and I don't recall the details.

BY MR. KASTER:

Q. Were you going to give attention and weight to those additional records if they were forthcoming?

A. Yes.

Q. So this is an email dated February 19th of 2018, about a month later, and Dr. Frankel is sending to you and Deb Gengler what appears to be drafts of reports.

THE REPORTER: Mr. Kaster, is this an exhibit, a new exhibit?

MR. KASTER: Yes. Exhibit 40.

THE REPORTER: Yes. Thank you.

MR. KASTER: Thank you, Jayne.

(Exhibit 40 marked.)

MR. KASTER: And for the record, Exhibit 40 contains Bates Nos. 2057, 2058 and 2059.

BY MR. KASTER:

Q. Do you recognize this as an email from Dr. Frankel to yourself dated February 19th of 2018; is that correct?

A. Yes.

Q. So my question: Did Dr. Frankel send you drafts of his reports?

A. I -- well, I don't -- he didn't -- he

doesn't say here he did a draft at this time, and I didn't see a draft.

And when he said "a preliminary review," I mean, I interpret it -- I interpret this as saying he'd reviewed the material. And at that time we had told him we were going to wait and see if we got potentially more information from the Mayo Clinic.

So we asked him -- I know in previous emails we asked him to postpone his, you know, final review, you know, until he got that information, but I did not see -- and I don't know if he prepared any preliminary report, but I've not seen it in our records.

Q. Back to my question: Did Dr. Frankel, as a matter of practice, send you drafts of reports?

A. Not that I recall.

Q. Is there a reason why you wouldn't recall that?

A. Well, yeah, it was -- it was, like, three years ago. I -- I haven't -- we work with a lot of physicians doing reviews, but I don't -- I don't remember Dr. Frankel sending me drafts.

Q. Well, the second line in this says "Attached are final drafts of the first 4." Do you

see that?

A. Yes.

Q. Then he says in the next line: "Feel free to comment," dash, dash, dash, "John."

So did you see drafts of report and -- of reports and comment on them?

A. Well, when I got drafts of reports, I did often -- typically I would talk to the consultant about it and ask questions, and there would be times where I'd ask him to expand on something, you know, and provide more detail or -- you know, if I thought that would be helpful.

Q. So there are occasions when you sought drafts of reports from this so-called "independent expert," Dr. Frankel?

MR. ORTBALS: Objection to form. It's argumentative. You can answer.

THE WITNESS: Well, he said they were final drafts. I mean, and I think they may have been the final reports too, and -- but he did ask me to review them and comment on those what he called "final drafts."

And -- well, and, I guess, then he says "I will affix evaluations to letterhead for final submission." So I guess -- I guess they weren't the

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final reports because they weren't on letterhead.
BY MR. KASTER:
Q. So you did, as a matter of practice, see preliminary drafts of Dr. Frankel's reports?
A. Well, I don't know, as a matter of practice, that I always did. In this case he sent me four that were drafts and weren't on letterhead and asked me to comment.
Q. These four drafts were all employees of Union Pacific Railroad who were being subjected to a fitness-for-duty evaluation, correct?
A. That's correct.
Q. And, as you sit here, do you know if you saw a preliminary draft of the report of Joseph Carrillo?
A. Not -- well, there's -- I don't think I did. There's nothing in my notes, you know, either the Medical Comments History or emails, that suggested I saw a preliminary draft of this report.
Q. You have no recollection one way or the other; would that be fair?
A. Well, I have no independent recollect- -- recollection other than looking at those documents, again, our Medical Comments History and emails.
MR. KASTER: I believe this will be

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Exhibit 41. Would that be correct, Jayne?
THE REPORTER: Correct.
MR. KASTER: And for the record, this is Bates No. 2237 through 2238.
(Exhibit 41 marked.)
BY MR. KASTER:
Q. And, Dr. Holland, this is an email copied to you to Debra Gengler from Theresa Rodino dated March 5th of 2018. Do you recognize the email?
A. Yes.
Q. Theresa Rodino is who?
A. She was one of the fitness-for-duty nurses.
Q. It appears that these are all the file review requests for Dr. Frankel, right?
A. Yes.
Q. It looks like he's being asked to do two in November, two in December, one in January, one in February and one in March, right?
A. Yes.
Q. And then there's, at the bottom, a subject file review for Joseph Carrillo. "Deb, following up - do we have a file review report or determination on this Electrician?"
That's related to Joseph Carrillo, right?

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A. Yes.
Q. This says Fitness-For-Duty Western at UPC from. Who's that from?
A. Well, it's from Bridgette Ziegler (sic). You can see her name is at the bottom of that block of --
Q. Um-hum. And who is that?
A. She's the fitness-for-duty nurse that was -- had this Western Region.
Q. So there's a request about what the status is of Joseph Carrillo's file review, right?
A. Yes.
Q. And this is March 5th of 2018?
A. Yes.
Q. Now, does Dr. Frankel have all the information he needs at this point to do a fitness-for-duty determination on this electrician as of that date? Do you know?
A. I -- you know, based on some of the subsequent emails that I looked at and reviewed in this case, I think it wasn't until April that we told him to go ahead and finish the review, and we were still looking for any follow-up information from Mayo Clinic. So I think he -- he was waiting for us to provide him more information, which is

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what we'd instructed him, I believe, at this time.
Q. Do you know whether or not Ms. Ziemer was confused about that?
A. Well, I don't think -- she wasn't actually handling the case. The way it was being done at this time is when we had cases going for file review, Theresa Rodino would manage the cases. So I don't think Bridgette Ziegler (sic) was -- she was really informational. I don't think she knew where we were with -- without asking.
Q. Is it Ziegler or Ziemer?
A. Ziemer. I -- you know, I -- I can't remember. I guess -- I guess this is correct. It's Ziemer.
Q. This is an email dated March 7th of 2018.
THE REPORTER: Exhibit 42?
MR. KASTER: This is 42. Thank you, Jayne. And for the record this is Bates No. 2247 and 2248.
(Exhibit 42 marked.)
BY MR. KASTER:
Q. So you send this email to Theresa Rodino, copied to Deb Gengler, and you say "I had a call with Dr. Frankel yesterday and reviewed his reports on the first 4 cases." Then you say "He will be

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sending the final reports shortly."
So it looks like you're reviewing drafts of his reports before they're submitted as final reports, right?
A. Well, I was discussing it with him. I mean, I don't -- I don't know that I actually had drafts. I was discussing the cases with him to get his opinions and find out what his opinions were, but I don't know if I had drafts. It doesn't say.
Q. Well, actually I think it does say. It says "I had a call with Dr. Frankel yesterday and reviewed his reports on the first 4 cases. He will be sending the final reports shortly." Do you see that?
A. Yes.
Q. Doesn't that mean to you that you were reviewing reports in draft before they're final?
A. Not necessarily. I don't -- I may have been that I was just asking him to give me his opinions, and that he would be -- find out where he was with the cases. So I don't -- I don't think it implies I had draft reports or I don't know that it -- I don't know that I did.
Q. Do you know that you didn't?
A. I -- well, I don't know. Like I said,

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this was three years ago. I mean, I think -- I think that -- I don't know.
Q. Well, you know, we have gotten, I think, what is a pretty robust discovery, I don't know if it's full discovery, so far. I haven't seen any draft reports.
Did you destroy draft reports in these cases?
MR. ORTBALS: Objection to form. It's argumentative. You can answer.
THE WITNESS: No. And, in fact, if he sent me something to the Union Pacific email, I can't destroy it. I mean, it's -- it would be impossible for me to destroy it.
BY MR. KASTER:
Q. So do you have an explanation for why there are no reports --
A. I --
Q. -- that are in a --
A. Well, I think I -- go ahead.
Q. Go ahead.
A. All right.
Q. That are in a more draft form?
A. Yes.
Q. Please.

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A. Well, as I said, I think it's likely that what I did is -- if we don't have draft reports, is I asked him what his impression was, and I said "his report," but I might have just said I reviewed the cases with him might have been more proper, and that he'll be sending the final report shortly.
So I -- I interpret this to mean I got his -- asked him for his final opinions on the case, and he gave them to me and then we'd get the reports.
And sometimes the -- we would do this with -- with the con- --consultants sort of to speed along the fitness-for-duty determination. If they -- if they were really -- if they'd already made the determination and they -- and they -- we discussed it by phone and they gave that to me, then I could go ahead and complete the fitness-for-duty determination, and we could add the final report to the case later.
And that's actually what happened back in June of this year, 2018, when I did a phone call with Dr. Frankel. He gave me his opinions over the phone. I wrote them in a fitness-for-duty determination, and then we got his final report, which was consistent with my fitness-for-duty

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determination. We got his final report later.
Q. Do you have a photographic memory?
A. No.
Q. Do you take notes?
A. Yes.
Q. Did you take notes on this conversation?
A. The -- on this conversation on these cases? I probably did.
Q. In these cases.
A. Yeah, on the -- on the -- for this email I probably did take notes.
Q. On the conversation that you had where you say Dr. Frankel communicated his viewpoints on Joseph Carrillo, did you take notes?
A. It would have been -- yeah, I probably would have because I wanted to record it accurately.
Q. Have you seen those notes?
A. Well, these handwritten notes, once I've got it written in the -- in my email, which I did, in my memo, then I don't keep the notes after I've got it written down.
Q. So you threw out the contemporaneous notes of the conversation about Joseph Carrillo with Dr. Frankel?
A. Yes, that would be my practice. I mean,

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once I'd written it in a -- in a written document.
MR. KASTER: This will be Exhibit?
THE REPORTER: 43.
MR. KASTER: 43. Thank you.
(Exhibit 43 marked.)
BY MR. KASTER:
Q. So it appears that there are record reviews scheduled for Dr. Frankel, a Lowes, an Ivan. Who are Ivan and Lowes?
A. Well, they're other consultants we have.
Q. At Nebraska Medical?
A. Dr. Lowes is at Nebraska Medical. He's a cardiologist. Dr. Ivan is an independent consultant, and he's an ophthalmologist.
Q. These are all file reviews related to fitness-for-duty evaluations?
A. Yes.
Q. It says "Waiting on Dr. Frankel for the following delivered December of 2017, Joseph Carrillo."
Was that when Dr. Frankel received the medical records for Joseph Carrillo?
A. You know, it doesn't say when we sent the records on here. I'm thinking the -- I -- I -- I know we sent them to him in mid-January. Probably

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around the 17th or 18th. And I -- oh, it says -- it does say January, 2018, which is probably when he got the first group of records.
THE REPORTER: Excuse me, Mr. Kaster. Did you give the Bates numbers for that last exhibit? I'm not --
MR. KASTER: Absolutely. Thank you, Jayne. It's Bates No. 2288 and 2289. It's a two-page document.
THE REPORTER: Thank you so much.
MR. KASTER: This will be Exhibit 44. Is that correct, Jayne?
THE REPORTER: Correct. Yes.
MR. KASTER: And this is an email dated 4/17/2018. It's Bates No. 2388.
(Exhibit 44 marked.)
BY MR. KASTER:
Q. Dr. Frankel is informed that there won't be any records of medical care from the Mayo Clinic. Do you see that?
A. Yes.
Q. So is the record of, or records, that Dr. Frankel have -- has related to Mr. Carrillo, are those at this point in Dr. Frankel's possession, if you know?

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A. I believe they are.
MR. KASTER: And this will be Exhibit 45. Is that correct, Jayne?
THE REPORTER: Correct.
MR. KASTER: And for the record, this is Bates No. 2395.
(Exhibit 45 marked.)
BY MR. KASTER:
Q. This is an email requesting Dr. Frankel if he has an update on Joseph Carrillo?
A. Yes.
Q. Do you recognize this as such?
A. Yes.
Q. Did you direct that they -- that Theresa Rodino or someone else find out the status of the cases that you had sent to Dr. Frankel for review at or about this time in April of 2018?
A. I don't recall. I don't recall if I requested it or if she initiated it, because this is her area of responsibility is these cases.
(Exhibit 46 marked.)
BY MR. KASTER:
Q. And it looks like Exhibit 46 is your memo regarding Mr. Carrillo. It's a fitness-for-duty evaluation or determination dated 6/14 of 2018.

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Is this when you made your final decision with respect to Mr. Carrillo's fitness-for-duty?
A. Yes.
Q. Can you place in time when it is that you had this phone call with Dr. Frankel?
A. I think it says -- I think it says later in this memo that I talked to him -- probably my -- my general practice would be to write the memo right after I talked to him so it was probably the same day, but it probably says farther down.
Q. I'll keep going. This is Bates No. 2403.
A. Okay. So -- so it -- to finish this question under the header "Findings of Medical Review with Dr. Frankel," it says "I recently discussed this with Dr. Frankel" on the phone. So I -- I don't know the -- typically I either write it the same day or -- or the next day, but I don't let it go very long. So it would probably have been in the last day or so after this -- before this was written.
Q. You can't be precise about when it is you had this phone call, right?
A. No. Not from this memo, no.
Q. Did Dr. Frankel say in the phone call that he was medically certain that it was a seizure, as

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opposed to an event of syncope?
A. Well, as I recall, I know his report -- I read it recently, and my specific question to him is: What is the likely diagnosis? And so he said "single unprovoked seizure," so that's what he thought the likely diagnosis was.
Q. But my question is a little different. Was Dr. Frankel certain that it was a -- an event of seizure, a single unprovoked seizure, as opposed to an event of syncope?
A. I think he was. You know, when you use the word "likely," you know, in this context in clinical medicine, "likely" means most probable. You know, more than any other probable diagnosis. And I think -- so I think he had a reasonable degree, another way to put it, of medical certainty that that was the diagnosis.
Q. What was his percentage degree of certainty? Do you know?
A. I don't know. You know, I mean, you can ask him. I think that typically if you don't have evidence for any diagnosis, you could say that the diagnosis is unclear or he could have said, in this case, loss of consciousness of uncertain origin.
I mean, you'd have to ask him, but I think

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medical certainty means to many physicians it's the most probable; more probable than the others, and there's some evidence for it.
Q. Are seizures sometimes caused by a lesion on the brain?
A. Yes.
Q. Is that a -- a probable cause?
A. The -- I mean, it could be on occasion if you had -- depending on the case and what the history was, what the objective findings were.
Q. I mean, there's no evidence of a lesion on Mr. Carrillo's brain, correct?
A. That's right. He'd had his MRI scan, which was done after the loss-of-consciousness event. It didn't show a lesion on the brain.
Q. He also had a normal EEG test, right?
A. Yes.
Q. All of his tests that were conducted, including the MRI and the EEG, were normal, correct?
A. The -- well, the diagnostic tests that he had, neurological tests were more the -- well, let me just put it this way: He had a lot of lab tests done, and there were some minor abnormalities in some of those. Like in the liver function test. I don't think those, and don't think Dr. Frankel,

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either, thought those were relevant to these questions of loss of consciousness.
And so the abnormalities that -- on some of his lab tests I don't think would -- would have been relevant to loss-of-consciousness issues.
And -- and then the other abnormality he had on physical exams, he had some sensory defects in the right upper extremities, but he'd had those before after his elbow operations and carpal tunnel.
So, you know, it -- it isn't fair to say everything was normal, but on those two tests you're talking about, the MRI and the EEG, they are normal.
And Dr. Frankel didn't note any -- any lab test abnormalities that he thought were relevant to determining loss of consciousness.
Q. He had, in fact, some elbow difficulty from an injury from wrestling in high school, right?
A. Yes.
Q. And that has nothing to do with his loss of consciousness, right?
A. I -- I don't believe it would. Yes, that's correct.
Q. How about this Gabapentin, does that have anything to do with this case?
A. Well, he -- he -- the notes, the records

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suggest he was taking it, or at least he was prescribed to be taking it at this time, and it was -- and it's an issue of interest because Gabapentin is used for pain issues, which is what Mr. Carrillo reported he was taking it for, but it's also an antiepilepsy drug. So it was something that -- it was an issue we had to clarify why he was taking the Gabapentin.
Q. Did you clarify it?
A. Yes, and the clarification came in in a note from the fitness-for-duty nurse and Mr. Carrillo where he said he was taking it for his right arm pain or -- or sensory problems.
Q. It is, in fact, prescribed, often prescribed for pain, right?
A. Yes.
Q. There's no indication in this case that Mr. Carrillo ever had an event of seizure or was in any way ever diagnosed as an epileptic, correct?
A. Well, there's little --
Q. Just let me --
A. -- evidence that --
Q. Let me back up because that's a multiple question.
Do you have any record evidence that

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Mr. Carrillo had an event of loss of consciousness prior to the event at issue here?
A. No, I haven't seen anything in the records related to that. So there's no evidence that I've seen of that, of a prior loss-of-consciousness episode before the one in June of 2017.
Q. Does he have, to your knowledge, any history of epilepsy prior to the event in this case?
A. No.
Q. Do you have any reason to believe that he was taking Gabapentin for epilepsy?
A. No.
Q. Is Dr. Frankel an expert in the FMCSA, do you know?
A. I know he's familiar with it because when we asked him to start doing the reviews, we gave him copies of some of the relevant documents.
Q. Do you know if he followed the FMCSA in placing any work restrictions on Mr. Carrillo?
A. Yes.
Q. How do you know that?
A. Because I'm familiar with the FMCSA medical expert handbook and their guidance on a seizure of -- a single unprovoked seizure of unknown cause.

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Q. Do you know Larry Mann?
A. I've met him.
Q. Do you know if he was deposed in another matter, the Ingram matter?
A. I do know that.
Q. Is it your testimony that Union Pacific adopted the FMCSA because of the failure of the RSAC committee to come up with a set of rules and regulations pertaining to workplace safety for railroad workers?
A. Well, I -- I -- it is -- I believe you're talking about the F -- the Federal Railroad Administration's RSAC committee -- RSAC is Rail Safety Advisory Committee -- had formed a medical standards working group and were charged by the RSAC committee with coming up with some proposed medical standards for safety critical railroad workers that then could be used under the FRA as a basis for regulation.
And so the -- in answer to your question, I'm aware that that working group -- the -- a doctors' task force within that working group, which I -- which I participated, did come up with a draft set of medical guidelines, but then they weren't moved forward, and FRA did not institute any medical

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standard regulations that were comprehensive.
And Union Pacific did -- after that happened, we took an approach that we would use the FMCSA medical guidelines for commercial drivers to the extent they were applicable -- or we -- we would use those, as well as other information, other medical information and guidance in making fitness-for-duty determinations.
So I think this answers your question. So, yes, all this was -- happened after the RSAC medical standards committee didn't result in any FRA medical standards.
Q. What was your position on -- on the committee? You worked on the committee, right?
A. Yes. When I -- after I became -- the committee actually started, I think, in 2006, and it went actively until 2011. And in 2010, 2011, when I was chief medical officer, I -- I would go to the meetings, and I'd participate in the -- both the working group meetings and in the physician task force meetings.
Q. Did you support the adoption of these standards for railroads, the medical standards that were being worked on by this committee?
A. Yes.

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Q. So your -- did you have a vote, by the way?
A. Not individually. The way the task force worked is if it ever came -- basically I don't recall a vote while I was there. People were in agreement. But there was one vote for the American Association of Railroads which -- although we had more than one railroad physician at the meetings, if it would -- ever came to a vote, we'd have one vote. One vote for the physician who was representing the unions and one vote for the FRA who had their chief medical officer presiding over the meeting.
So, yeah, I don't recall having a vote. I think it -- there was agreement that -- among the group that we'd move these forward.
Q. So did the railroads vote in favor?
A. Well, let me -- let me just back up. I was talking about I don't recall a vote in the physicians' task force, and -- and although there were, you know, debates and discussions, we came up with a consensus agreement they were acceptable. That was sent by the chief medical officers for the FRA, Dr. Arseneau, to the larger working group in early September. And then either --
Q. Of what year?

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A. 2011, early September 2011. And then there was a final meeting of the working group in late December, 2011, where they were discussed. My recollection is the -- there wasn't a vote at that meeting by the working group either, whether to move them forward or not, and there was going to be further discussions about it, and that was the last meeting.
Q. Was there ever another meeting?
A. Not an in-person meeting of the whole group, no, of the whole working group. That was the last one of the working group.
Q. Was there a final vote of the medical group?
A. I -- I -- as a -- well, I don't think there was a final vote on whether to adopt the medical standards proposed by the physicians' group.
I think there was a -- and I don't know if there was a vote, but I think the action was to go ahead and have a smaller working group that looked at the -- and I'm not sure if this is precise, but so the cost benefit of this proposed new regulation, which is required by the Office of Management and Budget, OMB, and to proceed with that part.
So I think -- I -- I -- I don't recall any

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vote, even by the large working group, about whether to accept these medical standards or not.
Q. So when did Union Pacific decide to default to the FMCSA or some portions of the FMCSA to make its fitness-for-duty determinations?
A. I -- I think it was -- well, it was sometime after that. You know, when -- when it became -- it seemed that either these FRA medical standards weren't going to be promulgated or it would be a long time before they were, so it was sometime after that. I don't know, you know, what -- but within the next year, sometime in that time period.
Q. So Union Pacific decided to start applying some sections of the FMCSA sometime in 2012 or 2013?
A. The -- I don't recall. I mean, I -- I mean, I think we were doing that in 2012, 2013, but I don't know -- I don't know that there was a specific starting time that I can recall.
Q. It's fair to say that Union Pacific doesn't adopt the FMCSA as a whole, correct?
A. The -- you know, it -- that's correct, we haven't -- we haven't made a statement that we're adopting it as a whole, but what we've done, and

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mainly on individual cases, is -- is, among the physicians, we've consistently applied it. And then there's some areas where we have used other evidence and recommendations for our consultants often in areas where the FMCSA doesn't provide a lot of detail.
And in some cases, like in our dealing with diabetes with insulin, we have had -- been using guidelines that -- you know, that were less restrictive than FMCSA because we thought that was appropriate.
Q. Is there any official policy statement or proclamation from Union Pacific that they were going to adopt the FMCSA or some portions of it?
A. I -- well, I don't know that there's a policy statement per se. There -- there are various fitness-for-duty determination memos that have -- that I and the associate medical directors have written where we say we're following that guidance.
And, you know, so we -- we have written it in related individual cases, and -- and there are some memos which -- which I had written mainly to the Law Department or EEOC Department to say this is what we are doing, and I did that really to provide a -- such a document. And -- and those -- I mean, I

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know you're familiar with because they've been produced in other cases that you and I both have been involved in.
Q. The FMCSA as a matter of law doesn't apply to Union Pacific Railroad, right?
A. Well, not exactly. You know, we do have a number of employees that have commercial driver's licenses which are regulated by the FMCSA, and it does directly apply to those individuals. And for workers that aren't seeking a commercial motor vehicle driving license it doesn't directly apply to them legally.
Q. The FMCSA has qualified and certified examiners, right?
A. Yes.
Q. You're not such a person, right?
A. No, no.
Q. You've never been certified or qualified to do an FMCSA examination, correct?
A. Well, no, that's not correct.
Q. Well, there's an actual process for -- for becoming certified. You're aware of that, right?
A. Yes.
Q. You've never become certified, right?
A. That's correct.

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Q. Let me ask you about these work restrictions. I'm going to focus in on No. 5.
These were the work restrictions you placed on Mr. Carrillo, right?
A. Yes.
Q. It says not to operate company vehicles; not to work on or near moving trains; not to operate cranes, hoists, or machinery; not to work at unprotected heights.
Then the number 5: "Not to perform work where decisions or actions can affect the safety of others." Then it puts in parens "(not to work as a Train Dispatcher or similarly" -- "similar safety sensitive positions.)"
Does the language in parens define the first section of that sentence?
A. Well, I -- I don't think -- I think "define" is -- is too -- is maybe the wrong word here.
It's meant to be partly an example and explain it. So it's meant to help explain what we mean, and the train dispatcher's specifically one of the jobs we're concerned about with No. 5.
Q. You consider an electrician to be a similar safety sensitive position to a train

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dispatcher?
A. No. I mean, their tasks are -- are different, and the safety concerns are somewhat different.
Q. Do you remember a restriction being placed on Mr. Carrillo that is different than these restrictions?
A. I -- well, no. I mean, I think these are the only restrictions that have been placed on him. I think before this final determination, the fitness-for-duty -- fitness-for-duty determination was just not fit for duty pending completion of the evaluation.
Q. So these are the final restrictions, correct?
A. Yes.
Q. And these are the only restrictions, correct?
A. The -- well, these are the final restrictions that I gave. I know they're interpreted by our fitness-for-duty nurses, and I think correctly, is when people get these restrictions, they're also given restriction from applying for a commercial driver's license or a crane operating license for Union Pacific.

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Q. Did Mr. Carrillo need a commercial driver's license to be an electrician?
A. Well, as far as I know, he didn't, but with this -- with the electricians, you know, the -- the individual shops sometimes have additional requirements based on geography and location. And I don't know that he needed that, but it -- it could be -- there could be some situations where a diesel electrician might need that to go out and help with a repair where they -- they couldn't bring it into the shop, but I don't think -- but I don't know of any reason to think he needed that.
Q. In any case, setting aside the commercial driver's license for the sake of this question, these are the only restrictions that you placed on Mr. Carrillo, right?
A. These are the only ones I placed on him. As I said, you know, just to clarify what I also said, is when it comes out in the computer, it says not to -- applying for a crane operator's license, which is a special certification. Now, they're sort of covered by this where I said not to operate cranes if it could result in injuries to himself or others. And I think -- but these are the only ones I wrote and placed on him, yes.

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Q. Did somebody else place different restrictions on him, as far as you know?
A. I don't know. But just to clarify again, I do know that -- that the nurses go ahead and re- -- and also our computer program goes ahead and -- and does place those additional restrictions that they can't apply for a commercial driver's license during operation based on these restrictions.
So it's just a different -- you know, technically there's the -- those things would also show up to the manager, but I think they're covered by the ones I wrote. So it's just another explanation. And I don't know of any other restrictions that were placed on him.
THE WITNESS: Would this be a time we could break for maybe five minutes?
MR. KASTER: Absolutely, certainly.
THE WITNESS: Okay.
MR. KASTER: Let's -- let's take -- let's take 10 minutes.
THE WITNESS: Okay.
THE VIDEOGRAPHER: We are going off the record at 10:27 a.m.
(Recess taken from 10:27 to 10:41 Pacific

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time.)
THE VIDEOGRAPHER: This is Media No. 2 in the deposition of Dr. John Holland. Today is November 17th of 2021. We're going back on the record at 10:41 a.m.
BY MR. KASTER:
Q. Dr. Holland, I'm going to take you to another exhibit.
THE REPORTER: That would be Exhibit 47.
MR. KASTER: Thank you.
(Exhibit 47 marked.)
BY MR. KASTER:
Q. It says from Niki -- I can't say this. Nikia Davis. Who is that? Do you know?
A. She was Dr. Frankel's assistant.
Q. It says "Attached are the reports we spoke of." It looks like this -- these reports were communicated on or about August 1st, right?
A. Yes.
Q. Does that include -- and it's not clear from this record if that includes Mr. Carrillo. Do you know if it does?
A. Well, it's one of the attachments down below. It says --
Q. Yeah. So, for the record, we'll look at

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Bates No. 2515 and 2516. 2515 doesn't refer to Mr. Carrillo specifically, but the second page refers to a report PDF attached for Mr. Joseph Carrillo, right?
A. Yes.
Q. And from your review of these files in preparation for your deposition here today, do you believe you received Dr. Frankel's written report on or after August 1st of 2018?
A. Yes. I mean, I -- I know the report has a date on it too, but I -- from this I believe that is true.
Q. All right. So I want to be clear about this: You received Dr. Frankel's report on Joseph Carrillo on or after August 1st of 2018, correct?
A. Well, you know, I don't have an independent recollection. Looking at this email, that -- that appears correct.
Q. So I'm going to ask you about the next exhibit.
THE REPORTER: 48?
MR. KASTER: Exhibit 48.
(Exhibit 48 marked.)
BY MR. KASTER:
Q. And this is actually the report on Joseph

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Carrillo that was attached to the email previous, correct?
A. Well, I assume it is, yes.
Q. And just for the record, we're talking about Bates No. -- and I'm sorry to make everyone dizzy here -- 2517 through 2520, and this is actually the signed writing of Dr. Frankel related to Dr. -- related to Joseph Carrillo, correct?
A. Yes.
Q. And I noticed this: It's actually dated May 19th of 2018. Do you see that?
A. Yes.
Q. Do you have any explanation for why you didn't receive it in this form until on or after August 1st of 2018?
A. I don't know. I mean, my -- my assumption is that -- I don't know. Actually I don't have an assumption. I don't know.
Q. Well, let me ask you this question: Is it possible that this report was in draft in or about May of 2018, and that you went back and forth with Dr. Frankel until you were satisfied with the final draft which you received on or after August 1st of 2018?
MR. ORTBALS: Objection to form, but you

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can answer.
THE WITNESS: Well, I -- I don't think that's what happened. I mean, I think if I -- you know, I think, as I -- we discussed, I had discussion with him on the phone in June right before I wrote my memo dated June 14th, and he said he would send the final report, but I -- I don't have any indication, and I don't believe, from the way I wrote it, I ever saw a draft.
And I don't have any independent recollection, and I don't think there's any- -- anything in the Medical Comments History that suggests I talked to him more than that one time.
And my practice in talking with the consultants was to go over the report so I understood it, and I ask them to explain things, and sometimes they would add to their report more explanation. I never asked for changes, other than, you know, to make sure it was clear in terms of the explanation.
BY MR. KASTER:
Q. Do you have any explanation for why this is dated in May?
A. I -- I mean, sometimes things get misdated just by a clerical mistake or there is a draft

that's started or maybe they copied part of the, you know, address block from another letter and don't correct it. There could be a number of explanations, but I don't know.

Q. Well, that's one explanation. Is -- was there a draft started on or about May 19th of 2018? Is that a possibility?

MR. ORTBALS: Objection to form. You can answer.

THE WITNESS: It's a possibility, but I don't know. I don't know if that's the case.

BY MR. KASTER:

Q. In any case, it looks like you send this on to Theresa Rodino on or about August 8th of 2018, correct?

A. Yes.

Q. And just so we're clear about this, this is Bates No. 2526.

MR. KASTER: And, Jayne, I'm not sure that I gave you the Bates numbers on the report of Dr. Frankel. Did I do that?

THE REPORTER: Would that be Exhibit 48?

MR. KASTER: That would be the previous exhibit, yes.

THE REPORTER: And so this document that

we were just looking at should be marked 49? I'm sorry.

MR. KASTER: Correct.

THE REPORTER: Correct? Okay.

(Exhibit 49 marked.)

MR. KASTER: So we're clear I'm going to pull up 48 again --

THE REPORTER: Okay.

MR. KASTER: -- to make sure the record is clear about this. So the May 19th, 2018, document is Bates numbered 2517 through 2520.

THE REPORTER: I want to go back to that -- where I marked that, Mr. Kaster, to make sure that those are the Bates I've got there.

MR. KASTER: Sure. Absolutely.

THE REPORTER: 48, Bates No. 2517 through 2520. We're right on. So 49 is 2526.

MR. KASTER: All right.

THE REPORTER: Okay.

MR. KASTER: Thank you.

THE REPORTER: Thank you.

BY MR. KASTER:

Q. Doctor, I'm now going to go to a medical records file. I will ask you about selected pages of this file. It's quite a voluminous file. I

don't want to deprive you of the opportunity of looking at any part of it if you choose to in answer -- answering my questions. I have questions about certain pages of this document.

A. All right.

THE REPORTER: And this will be Exhibit 50?

MR. KASTER: This will be 50.

THE REPORTER: Okay. Thank you.

(Exhibit 50 marked.)

BY MR. KASTER:

Q. By my understanding of these documents, this is the medical record history that was provided to Union Pacific for Mr. Carrillo.

Do you recognize it as such? I will page through this document, if you need me to.

A. Okay. Let -- let me -- let me just clarify, because you put up a page of this big PDF file that's 545 pages, and then this particular document is part, I believe, of the preplacement medical exam. So when you're talking about -- are you just talking about this preplacement medical exam document?

Q. I'm actually talking about the entire document, which I understood to be -- and I'm paging

through it now. For the record, it starts at Bates No. 103 and it goes to Bates No. 647.

Let me ask you this question: Without asking you if you've seen every single page of this document, do you recall receiving a medical record or history for Mr. Carrillo as a part of your fitness-for-duty determination?

A. Well, to -- to clarify, I mean, I think the document, the big document we're looking at, even though it's not labeled, is my -- what we typically would call at Union Pacific the Employee Medical file, and it's all the documents that are put in the electronic medical record for Mr. Carrillo from the time he started work with Union Pacific through our last contact with him. Not -- and so I am familiar with this. I reviewed this in -- this large PDF file in preparation for my testimony today.

Q. Did you review this medical record history at the time that you made the fitness-for-duty determination for Mr. Carrillo?

A. Well, I would have had the relevant records related to the loss of consciousness -- the loss-of-consciousness episode and other medical records he provided after that to Union Pacific. I

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would have had all of them available to me to look at, you know, through our computer system.
My typical process would be for the fitness-for-duty nurses to print out all of those and put them in a paper file for me to look at when I was doing this fitness-for-duty review and determination.
And so that would be the typical process, but I don't have any document that said I did that. But I -- all of them would have been available, and it would have been my usual practice to look at all of the relevant documents related to this episode and fitness-for-duty determination.
Q. All right. I'm going to take you through some of the pages. So one thing I'm not clear about, and I want the record to be as clear as your memory is on this subject.
Did you read the medical file in its entirety before placing the restrictions on Mr. Carrillo? Do you recall?
A. You know, I -- I likely did. I mean I think, when I wrote my memo in June, 2014, I put a lot of detail in about the history, you know, in addition to what my statement is about my phone call with Dr. Frankel. So in -- so it would have been my

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practice to review those records.
Q. So that would be your general practice. You don't have any memory of doing it here, I take it?
A. No, I don't have any other -- I don't remember the -- independent memory of doing that, no.
Q. All right. I'm going to try to make this as efficient as possible. So if we go to page -- and so we're clear, these are medical history documents.
These medical documents appear to be related to Mr. Carrillo's previous surgeries. He had surgery on his elbow -- as I look at the records, it appears to have been twice, right?
A. The -- he had two surgeries on the right upper extremity. One was on the elbow. I -- I saw somewhere reports that he also had a carpal tunnel procedure, which would have been on the wrist, but -- but they were both on the upper extremity.
Q. All right. So did you look at these history records?
A. Yes. Well, I mean, I looked at them in preparation for this deposition. I don't know if I looked at them at the time of the fitness-for-duty

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determination.
Q. All right. Because there's a family history here that was -- that's discussed in this record, which is on Bates number, page No. 200, and I want to know if you take this as true: "Patient reports athralgias" -- "athralgias/joint pain but reports no muscle aches, no muscle weakness, no back pain and no swelling in the extremities. He reports numbness but reports no loss of consciousness, no weakness, no seizures, no dizziness and no headaches."
Do you take that as true?
A. Yeah, I don't -- I don't have any reason to believe it's not true. I mean, and...
Q. So if we go to Bates No. 201, it has a description here of his neurological condition. "Gait and Station: Normal gait and station. Cranial nerves: Grossly intact."
Do you see that?
A. Yes.
Q. Do you take that as true?
A. Well, I -- I mean, I -- I don't have any -- I don't have any reason to doubt it, so I will accept it, yes.
Q. So if we go to Bates page 227, I think we

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see that Mr. Carrillo was cleared for work in a prior fitness-for-duty evaluation in or about December of 2015, correct?
A. Yes. Can -- can -- can I add something? As you were scrolling through here, I think I -- I made an error in one of my prior statements where I said he had an elbow operation and a carpal tunnel operation. It actually was a cubital tunnel, C-U-B-I-T-A-L, tunnel, which is also at the elbow. So you were correct when you said they were both elbow operations.
Q. In any case, Mr. Carrillo is medically cleared with no restrictions in December of 2015?
A. Yes.
Q. Union Pacific would have had the right to look at any medical records as a part of that medical clearance, right?
A. Well, yes, we can ask for any medical records in a fitness-for-duty determination.
Q. And I'm going to ask you if you take this as true. I'm going to go to Bates No. 306. It will take me a minute to get here.
This is a record related to his cubital tunnel surgery in late June of 2016. Do you see that?

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A. Yes.
Q. It appears that there was a neurological review at that time. It says "Alert & oriented X 4."
Do you see that?
A. Yes.
Q. What does that mean, "Alert & oriented X 4"?
A. Well, it has to do with mental status. So the alertness means that you're -- you're not drowsy. You're not asleep. You're responsive to questions, and you -- it's just sort of a general description of your responsiveness to the environment.
Oriented means you're -- you ask questions about what day is it, what time is it, who are you, where are we at, that type of thing, so you're oriented to yourself and to the environment.
Q. That's a standard neurologic exam? Would that be true?
A. Yeah, I mean, it's -- it's mainly a mental status exam. It's sort of brief. It's not a full neurological exam.
Q. I'm going to take you to Bates page No. 223.

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By the way, can people faint from being dehydrated?
A. It -- yeah, they're -- it -- it depends how dehydrated you are and other effects, but that is -- sometimes seems to be a contributor to what's called orthostatic syncope. So that can happen, but not -- but not everyone that's dehydrated is going to faint, but it can contribute to it in some situations.
Q. It has a description from the patient of his chief complaint here. It says "Patient is here for physical exam and states last Tuesday he fainted." Do you see that?
A. Yes.
Q. Did you see this record at the time that you were reviewing his medical records?
A. Well, I did -- I do -- reviewed this for this testimony or for my deposition. Like I said, it would have been my practice to review these records at the time I'm making my fitness-for-duty determination because Union Pacific had this. I believe -- well, it's in the Union Pacific medical files so we have it.
Q. I'm going to take you now to Bates No. 327. This is a -- the neurological examination

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based on a physical exam of Mr. Carrillo, right?
A. Yes.
Q. It says "Neurological: No dizziness and no vertigo. Fainting one episode and upon standing up. No motor disturbances and no sensory disturbances."
What does that mean: "No motor disturbances and no sensory disturbances"?
A. So motor is movement of your limbs with your muscles. Moving your limbs, your fingers, your hand, muscles in your face, and you can test that on a physical exam.
The -- the -- and -- and "no sensory disturbances" has to do with sensation. So pain, cold, hot, vibration, position sensation.
I -- I think this is actually -- this is actually not the physical exam. I think this is the review of symptoms, and then the physical exam is down below. So this is asking the patient questions about whether you have dizziness or vertigo.
Q. Asking the patient questions about what happened, right?
A. And what their symptoms are, yes.
Q. Is it your view that Mr. Carrillo is disabled?

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A. The -- I'm -- I -- I don't know that -- you know, I don't tend to think of disability as a -- as a medical issue. You know, more physical impairment as -- I -- would be a medical issue.
I think he has a medical condition that poses a risk for sudden incapacitation that requires work restrictions. I don't know if that meets the definition of disability.
Q. When you say that he has a "risk of sudden incapacitation," do you regard that as a risk related to his ability to work in a job at Union Pacific Railroad?
A. Yes.
Q. So I'm looking at page Bates No. 2 -- 334. You filled out this form. It says "TO BE COMPLETED BY THE ATTENDING PHYSICIAN."
You weren't --
A. This is --
Q. You weren't the attending physician, were you?
A. No. Can I see the top of the form?
Q. You can see anything you want. Sure. Just tell me.
A. So I think it's a two-page form to the

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Railroad Retirement --
Q. Okay.
A. -- if I remember. Okay. So this is a -- because there were forms that go to the Railroad Retirement Board, and this is -- okay. So this is a letter to the employee at the top, and then the second part, "TO BE COMPLETED BY THE ATTENDING PHYSICIAN," if you can go to that. Can I -- can I see the whole --
Q. What would you like me to do, Doctor? Go up or down?
A. Raise it up about a half a page so I can see it from the place where it says "COMPLETED BY THE ATTENDING PHYSICIAN."
Q. Right there? Is that what you --
A. The other direction.
Q. The other direction.
A. Direction, yes.
Q. Certainly.
A. Yeah, I guess that's going down.
Q. Yeah.
A. "TO BE COM"- -- yeah, so keep raising it up a little bit more.
Okay. So I -- I don't remember your specific question now about this.

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Q. It says "TO BE COMPLETED BY THE ATTENDING PHYSICIAN."
You weren't the attending physician as the stamp below indicates, right?
A. That's correct.
Q. Okay. Then it says "RHE." What does that stand for, RHE?
A. Well, that is our acronym, Reportable Health Event.
Q. And LOC stands for what?
A. Loss of consciousness. And if I could --
Q. Then you say --
A. -- further explain -- if I can explain this for you.
Q. I just wanted to know what that meant.
A. Okay.
Q. "Is the employee permanently disabled from his or her regular occupation?" You put "no," right?
A. Yes. And to be -- to clarify, these are filled out by the fitness-for-duty nurses, and then I authorize it and put my stamp with a name on there. But this is -- these -- these obviously are done so they can get their temporary benefits from the Railroad Retirement Board during the

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fitness-for-duty determination.
Q. So why is the word "no" written on there?
A. Well, they ask is he permanently disabled. No. I mean, he -- we had -- during the fitness-for-duty process, and this was signed, you know, pretty early in July 2017, we were still completing the fitness-for-duty evaluation. We didn't know what the determination would be about whether he'd be able to return to work or have -- or if -- if there would be a time period where he wouldn't be able to work or if it would be permanent. So that wasn't known then. And -- and --
Q. You also -- go ahead. I'm sorry. I'm sorry.
A. And -- and --
Q. I'm sorry.
A. And -- and --
Q. I didn't mean to -- go ahead.
A. And actually he wasn't permanently disabled. We -- we put a five- -- five-year limit on him from doing safety critical work or, more precisely, we put work restrictions on him for five years for activities that would pose a safety risk if he had sudden incapacitation. So it wasn't

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permanent.
Q. On or about this same time you fill out a Supplemental Doctor's Statement that put the diagnosis as loss of consciousness according to Bates No. 344, right?
A. Yeah. So that was completed three months later, October 25, 2017, yes.
Q. Did you have the records at that time related to his event of loss of consciousness?
A. The -- so at this time -- I -- I don't know which records we had and which we didn't have. At this time Dr. Charbonneau was managing the case, and I know that from looking at the Medical Comments History.
And some of the records it took a long time to get. For instance, the records from the neurologist I think we didn't get until late in the fall. So I don't know if we had them at that time. I don't know that we had a complete set of records at this time.
Q. So if we take a look at Bates No. 354, we see the assessment here for Mr. Carrillo of "Syncope, unspecified syncope type." Do you see that?
A. Yes.

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Q. And then the next thing says "Sinus bradycadia- -- "cardia." What is that?
A. So that means the person's -- it has to do with a heart rhythm. The person's heart rhythm is an irregular rhythm, but it's just beating slowly. And typically it means if the heart rate is recorded to be less than 60 beats a minute.
Q. One of the things it says here is there's "No sensory or motor focal neurodeficits." Do you see that?
A. I see that, yes.
Q. Is it true that when a person has a seizure, it's often accompanied by partial or permanent paralysis of some part of the body?
A. The -- no, I don't think that's true. I don't think that's often. It -- it's possible if you had -- for instance, if it was related to a stroke or a severe head injury, but I -- it's not a -- not a usual residual effect of a seizure.
Q. Taking you to Bates No. 368, this is a reference to Dr. Aguilar's exam of Mr. Carrillo dated August of 2017. Do you see that?
A. The -- so -- yeah, I think this is actually the radiology report from the MRI brain scan on August 16th, and I think it just has

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Dr. Aguilar as the referring physician.
Q. Thank you. In any case, there's no abnormality or suspicious legion -- lesion in the brain, right?
A. That's correct.
Q. His MRI was normal, as we discussed, right?
A. That's correct.
Q. And if we look at Bates No. 379, it looks like you asked for the full neurological evaluation of Mr. Carrillo, right?
A. Yes. Could I see the -- the date on this at the top of the page?
Q. Certainly. This is December 1st of 2017.
A. Okay. Thank you. I can answer your question, yes, this is -- this is a letter that the fitness-for-duty nurses send out during the fitness-for-duty evaluation asking for specific medical records we haven't received -- received yet. So one of the things that was asked for here was the full neurology evaluation.
Q. If we go to this record, it looks like his motor functions and sensory func- -- functions are all normal, right?
A. Yes. Let -- can I just see the -- I think

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this is Dr. Aguilar's report, but can I just see the first page for --
Q. Of course, of course. You can ask me to move up or down any time.
A. Thank you. So, I mean --
Q. This -- let me --
A. I don't know where it is.
Q. Let me go back and get the first page of this as you requested, and so I think this is Dr. Aguilar's report. We're looking at Bates Nos. 354, 355.
A. You know, I think this is the cardiology -- cardiologist's report.
Q. Okay.
A. Maybe I'm wrong.
Q. Okay. Well, let's take a look at the first page then. I believe this is the first page of this document.
A. So -- so this is the cardiologist's report.
Q. Okay. And, again, it has the "Reason for Appointment, syncope and collapse."
What does syncope mean, by the way?
A. So syncope -- it -- it describes both an event and -- and the cause of it. Syncope is where

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someone collapses. They -- they lose consciousness, and they collapse and fall to the floor, you know, or -- and it is caused by a drop in the profusion of blood in the brain. In other words, a drop in the blood pressure in the brain which causes the brain not to have enough oxygen and the person loses consciousness. So if the person's standing, they'll -- like I said, they'll fall, collapse to the floor.
So that's what syncope is. It doesn't -- there's various causes of it, but that's sort of an explanation of what you both see and the underlying physiology.
Q. So is syncope essentially a term for a loss of consciousness?
A. No, not exactly. Loss of consciousness is really a descriptive term. The person lost responsiveness, consciousness. And -- and syncope is -- is a description of the events after the blood pressure in the brain drops below a level -- drops too low, and the person loses consciousness and -- and muscle tone. And if they're standing, they fall.
So it -- it's an explanation for loss of consciousness, but it's a more specific diagnosis.

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Q. If we take a look at Bates No. 393, I think we're seeing the last page of the report of Mario Aguilar, Dr. Mario Aguilar, but I'll bring you back because this is page 6. So let's look at page 1 so you can be certain what we're looking at.

This is the neurological follow-up. It actually says "Mia Saenz" on the -- if I'm saying that correct.

A. Yes, but I -- I think, again, it refers to -- she's the primary care physician that's going to get a copy of the report, but I think this is Dr. Aguilar's report. That's my --

Q. Okay.

A. -- recollection.

Q. That was my understanding of this document as well. Thank you.

If we look at the differential diagnosis, based upon his physical exam of -- based upon whatever examination he did of Joseph Carrillo, he has a differential diagnosis here, which is, as I read this, an offer of different explanations without selecting one, right?

A. Yes, that's what he did.

Q. The only thing he eliminates as a possibility here is a stroke.

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A. Well, he says -- I mean, it actually doesn't eliminate stroke because sometimes you can't see them on an MRI scan, particularly if it's done -- well, he hadn't done the MRI scan yet, but he -- he says it's not demonstrated. I -- I think I'm interpreting that to mean he didn't find any objective findings of a stroke on physical exam, and so he thinks it's less likely, but I -- and I think it's less likely too.

Q. So the neurologist, the treating neurologist, after whatever examination he did of Mr. Carrillo, wasn't sure what happened, right?

MR. ORTBALS: Objection to form.

THE WITNESS: He -- well, I think it -- he -- he doesn't choose between the -- the different possibilities in the differential diagnosis, and, you know, so I -- I don't know, and he didn't have any more explanation of -- of which he thought was most likely.

BY MR. KASTER:

Q. I'm going to take a look at another document in this medical history file. This includes -- let's go to 307. In my pagination it's 307.

Can you tell me what this is?

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A. I think there's a prior page, but I -- I can't without looking at the prior page. There must be a page before this too because I -- I would imagine --

Q. Is this your -- I'm sorry. Is this your handwriting?

A. No.

Q. Whose handwriting is it? Do you know?

A. Okay. This is a form -- it was a form for Aetna, which is what I believe was his disability insurance policy. And so typically this would be filled out by either our clerical assistant or -- and/or the fitness-for-duty nurses, and they would put my stamp on it. So I did not fill out these insurance verification forms.

Q. Okay. Whoever filled it out described what happened to Mr. Carrillo as syncope, right?

A. Yes.

Q. What does the second term mean, RBBB?

A. Right Bundle Blanch -- Branch Block, and that has to do with conduction of electricity within the heart. There are -- and it's the nerve fibers going down to the right side of the heart, and they're -- the -- the heartbeat conductions are slowed, so that's what -- and it could potentially

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be relevant in terms of heart disease. I don't know if it's relevant in this case.

Q. I'm now looking at -- we're now looking at a letter that you sent on January 10th of 2018 to Harris Frankel, Dr. Frankel, the outside neurologist, right?

A. Yes.

Q. In this letter of January 10th of 2018, you say this episode -- "The episode sounded like a seizure." Do you see that?

A. I -- I -- no. I'm looking for where that is.

Q. All right. "Summary of medical issues of concern." Do you see that second paragraph, "Mr. Carrillo had a precipitous loss of consciousness event at home in late June, 2017"?

A. Okay.

Q. And then it says, in middle of that paragraph: "The episode sounded like a seizure."

A. Yes.

Q. Then you say "He is reported to have no medical conditions, but he was apparently taking Gabapentin twice per day." Then you say "There was no clear explanation of why he takes this medication."

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A. Yes. I -- I -- and I want to clarify something. So this -- when we do a referral to the neurologist, there is a template letter where some of it, like the first paragraph here is template, and the questions we're going to ask are the same.

And then there's a summary that we fill out issues of medical concern individualized to the person. And so this one was filled -- completed by Dr. Charbonneau, our associate medical director, who was handling the case. And that is the typical process is the -- the associate medical directors fill out these details. And we're -- we're not trying to -- we're also sending them the medical records which -- where these came from, but we want to give them a little bit of an impression of what we want.

So -- so he filled it out and then --

Q. And you signed it?

A. I -- no. This is a nurse -- the nurse that sent it signed it. So he filled it out, and -- and they were authorized to go ahead and send these, you know, under my signature to get the fitness-for-duty or the review process started.

Q. So are you --

A. But then -- but then -- excuse me.

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Q. No, no, no. Go --

A. I didn't mean to interrupt.

Q. -- ahead. I don't mean to --

A. Part of the reason we do this is -- is it's under my authority, and the reports are going to come back to me and then I'll make the fitness-for-duty determination. So it's just our process to -- of how we do the final reviews.

Q. I mean, I'm confused about something else here.

Remember when you told me that you weren't trying to put your finger on the scale about what happened to Mr. Carrillo?

A. Yes.

Q. Then it says "but he was apparently taking Gabapentin 600 milligrams twice per day. There is no clear explanation of why he takes this medication."

That's just not true, is it?

A. Well, I -- I -- I think it was true based on the records. I mean, the records don't really -- the -- the records I think that were available at that time didn't seem to clarify it, and that was Dr. Charbonneau's impression at least. And I think the -- we -- it actually got clarified by our nurse

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talking to him and explaining why he was taking it.

But I -- I do think the records that we had contemporaneous to this event, loss-of-consciousness event, don't really describe why he was taking it. They just say it's a prescription he's taking.

Q. Then it has on this page, page 2 of 4, it says "Mr. Carrillo's neurologist is considering several diagnoses which include an 'Episode of nonresponsiveness,' a single unprovoked seizure or a single provoked seizure."

That isn't the entirety of the differential diagnosis, is it?

A. No.

Q. Do you have any explanation for why the other items listed as possibilities in the differential diagnosis of the treating neurologist were not included here?

A. No, I don't, but, of course, at this time some of the records being sent were -- Dr. Aguilar's direct records would have been sent too, but I don't have an explanation why the other conditions aren't listed.

Q. So this is his actual contemporaneous

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record where he repo- -- reported a fainting episode, right? For the record, this is Bates No. 423.

A. Yes, this is June 30th, 2017, and this is the first medical provider that saw him after the loss-of-consciousness episode, and it was his primary care provider, I believe.

Q. So this is his contemporaneous report of what happened, right?

A. Yes.

Q. And this is Bates No. 506. And, again, we have a listing here of imaging record indications, Syncope, unspecified type," right?

A. Yes.

Q. And it looks like, after seeing records through January of 2018, a report -- through March of 2018, that is -- a report is filled out under your direction of diagnosis, syncope, RBBB and sinus bradycardia, right?

A. So, yeah, I don't know that I -- actually it says "first treatment" and "most recent treatment." So this is in January. I -- I don't know exactly when this was sent, but that's what's written here, yes.

Q. And now we see another copy in the record

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of your fitness-for-duty determination of 6-14-2018, right?
A. Yes.
Q. Do you recall ever seeing a restriction that prevented Mr. Carrillo from working in any job that required critical thinking?
A. So I -- I don't recall a restriction that was just critical thinking that didn't involve safety critical activities or decisions.
Q. All right. Well, I'm showing you what I understand to be the final fitness-for-duty determination as a result of your fitness-for-duty evaluation of Mr. Carrillo, and we're looking at Bates No. 617.
Do you see this document?
A. Yes.
Q. Do you recognize this document?
A. And so this is a document -- yes, this is a document that is printed out by our system for our what we call eHealthSafe which is our electronic system for medical records and communications. And the nurses put restrictions in the system, and then it prints out a document which might be sent to a manager or the -- I don't know where this one was sent.

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Q. This is the document that is sent to the managers to determine if they can accommodate the restriction, right?
A. I don't know. I don't know who this was sent to.
Q. Well, don't you recognize this as the standard document listing the restrictions placed on an employee as a result of a fitness-for-duty determination?
MR. ORTBALS: Objection to form.
THE WITNESS: This -- this is that type of document. I mean, I -- it says "From: Bridgette Ziemer." I don't know if this went to the managers. It may have.
BY MR. KASTER:
Q. What do you mean "it may have"? This is what is typically sent to the managers, right?
MR. ORTBALS: Objection to form. You can answer.
THE WITNESS: It is a type --
BY MR. KASTER:
Q. Yes.
A. It is a type of document that's typically sent to the managers, yes. I don't know

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what this -- where this particular document was sent.
Q. Do you know what this means, "Critical Decision Making"?
A. Well, that isn't what I wrote in the restriction, and so I think that --
Q. That's not my question. Do you know what it means?
A. I think it means -- it is -- I don't know. I think it's ambiguous. Work requiring critical decision making the way I had written it was work requiring decision making that affects the safety of others, so...
Q. Do you know of a job that doesn't require critical decision making?
A. The -- I don't know. I don't use that term. You know, I think there are probably some jobs that don't require critical decision making.
Q. Can you think of one?
A. So I -- I -- I think if you have some jobs, for instance, if they're simple clerical tasks, I wouldn't call that critical decision making. It's really doing -- you know, following a task. And so I think there could be jobs like that, yes.

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Q. A clerical job wouldn't require --
A. And possibly some physical jobs too where they -- where they don't require -- you know, where they're basically you do what you're told to do, and you don't have to make decisions. So, yes, I think there could be jobs like that.
Q. Is an electrician, a diesel electrician, a job that requires critical decision making?
A. I would say yes.
Q. You agree the term is ambiguous?
A. Yes. I think it misstates the work restriction.
Q. So this is a mistake?
A. I think -- I think it's ambiguous and -- and -- if you just read this part. I don't know -- if -- if the managers aren't sure what we mean, they would typically, and what they're supposed to do is call us, call Health and Medical Services and get some clarification. And so I don't know if that happened in this case.
I mean, there's some other things about this document that are problematic, and this is a problem with the computer system is it doesn't show that they're just five years. We have other documents that we produce in Health and Medical that

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make it clear it's a five-year restriction.
But I think it's -- I think the response for a manager, if they got this, would be if that was -- if that was the restriction that was going to cause him not to be able to work, I think they would call, and they should call, and ask for an explanation because it's not -- it doesn't speak for itself.
Q. My question is more simple than that. Is this a mistake?
A. The -- you know, I -- in terms of the computer programming, you know, I -- I -- I wish they would have done it differently. So I would say this is not the way I would like to see it because I don't think it's clear enough in communicating it.
I don't know -- if the managers were relying on something that is that ambiguous, like I said, they're -- the process is they're supposed to call and ask for clarification.
So I -- it's not -- I'm not going to say it's a mistake. I'd say I wish it had been written differently, but I think -- I think there's a process where the managers could get clarification if this is the deciding factor in terms of the regulations -- or the restrictions.

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Q. This actually goes to the managers who then decide whether or not they can accommodate the employee, right?
A. Yes.
Q. Do you think that this kind of a restriction, as written, could lead to confusion?
MR. ORTBALS: Objection to form.
THE WITNESS: I think it -- I think I said that. I think it's ambiguous, and it's not clear what it means. So it could lead to conclusion (sic), and, of course, the process then would be for the managers to call Health and Medical Services and get clarification.
BY MR. KASTER:
Q. Is there a writing that says that?
A. There -- there is, I believe, training for the managers in how to deal with this process of getting workers fitness-for-duty work restrictions and determining if they can be accommodated. And so there is, my understanding, training for the managers on how to follow this process.
Q. Is there a writing about that?
A. I -- there may be. I don't know.
Q. Have you ever seen it?
A. Well, the -- the one thing that is -- that

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is in writing is the, you know, medical rules that describe at a general level of how the process of fitness-for-duty evaluations, and then interpretation by the managers is supposed -- supposed to proceed. There may be other instructions in writing or in PowerPoint training about this but I don't know.
Q. I'm going to share one last document, and I have just one question about the document.
THE REPORTER: I believe we're at 51.
MR. KASTER: I think that's correct. Thank you. Thank you, Jayne.
(Exhibit 51 marked.)
BY MR. KASTER:
Q. And so the record is clear, this is the Medical Comments History, and it's Bates numbered 74 through 102.
This is the document that contains sort of a blow-by-blow description of the fitness-for-duty evaluations that were done on Mr. Carrillo, right?
A. Yes. And, I mean, technically this is from the time he started at the company until our last contact with him when he left the company.
But this is just -- this is the communications between the fitness-for-duty nurses,

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mainly the associate medical directors and myself and the vocational rehabilitation managers and not -- so that's what it is.
Q. Every contact with Mr. Carrillo pertaining to any attempt to place him back in this job despite whatever restrictions you placed on him should be listed here, right?
A. So this doesn't really include contacts with Mr. Carrillo except it -- the nurse would be the prior contact. And if she contacted him, she would either paste part of his email here or maybe summarize it or say he called. So, you know, there would also be emails between Mr. Carrillo and the fitness-for-duty nurse that aren't contained in here unless the nurse happened to paste them in.
Q. All right. Well, I'm going to take you to a couple of entries here.
So nobody ever talked to you about this critical decision making restriction, right?
A. Not that I recall, but I don't --
Q. So we're -- go ahead. Go ahead.
A. I -- I -- I don't recall -- I mean, we had discussions about how we would like to have -- well, I don't know. I mean, let me get to answer your question. I don't recall talking about that

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specific issue at the time or -- or when I was working at Union Pacific. I may have, but I don't recall it.

Q. In the middle of this Activity Comment from August of 2018, August 16th of 2018, the same month when you received Dr. Frankel's report, there is this contact with Mr. Carrillo. There's a phone call from the employee, do you see that, August 16th of 2018?

A. Yes.

Q. It says "He was upset that he had not talked to anyone."

You never talked to him, for example, right?

A. I -- you know, in looking through the records I don't think that I did. I mean, I was always available to talk to him if he wanted to, and that's what the fitness-for-duty nurses typically tell them. But this -- this is a note from Kimberlee Foye, our vocational rehabilitation manager. And so I know Mr. Carrillo had been talking with the fitness-for-duty nurses because they often commented on that.

I'm interpreting his thing where he says he's upset he'd not talked to anyone that he's

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not -- by meaning he'd not talked to anybody from the vocational rehabilitation group yet, and that's why Kimberlee said "I'm sorry, it was my fault, I didn't respond." So I think that's --

Q. Well -- go ahead.

A. I think they -- I think that's -- I think -- I'm -- I'm assuming this is specifically about talking to vocational rehabilitation because it's clear he'd been talking to the fitness-for-duty nurses, and they -- they will typically say "If you want to talk to the doctor, we'll set up an appointment or a conference call."

Q. Okay. He's -- he says "I disagree with the restrictions." Do you see that in the middle of the paragraph?

A. Yes.

Q. And he's told by Kimberlee Foye "We have to work with the restrictions."

A. Yes.

Q. Then she says "You're welcome to explore reconsideration with fitness-for-duty."

Is that a formal thing, by the way?

A. No, it's not formal, but if -- if -- typically after we made the fitness-for-duty

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decision, if the employee, for instance, provides us more information from another doctor, we'll reconsider it.

So it's not -- it's not a formal process, but we try to -- or we do do that if we get more information, additional information from their physicians.

Q. Then it says "He has passed the OMTB." What is OMTB?

A. I -- in this context it appears to be some kind of vocational rehabilitation. Probably aptitude tests, but I don't know.

Q. "And is interested in manager positions."

And then it says "We discussed his restriction regarding critical decision making and his applications." It says "He would like to see the restriction removed."

Did anyone talk to you about that restriction; why it was there, what did it mean, could it be removed?

A. So I don't recall. I mean, there's nothing in the Medical Comments History. I mean, Kimberlee Foye is well familiar with what that restriction means. That it's -- it's really critical decision making related to safety, and what

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would -- and, you know, the only thing we really specify is the train dispatcher in there, although there could be other positions.

What Kimberlee would typically do, if she's working with someone with a job placement, and she is -- she or he, the employee, is concerned about whether the work restriction would prohibit it or it would interfere with the job duties, Kimberlee would typically contact me, as well as the manager, and -- and we might do clarification about a specific job, but I don't know that -- I don't have any record that we talked about it in this case.

Q. All right. So just so we're clear on the process, these restrictions are placed by the fitness-for-duty people in the Medical Department, including you under your supervision when you were chief medical officer, correct?

A. Yes.

Q. And then they are documented in the writing -- the writings that we've looked at, right --

A. Yes.

Q. -- your memo --

A. Yeah.

Q. -- and then the form that is filled out

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for Mr. Carrillo that goes to the managers, right?
A. Yes.
Q. And the form that was filled out that goes to the managers said no critical decision making, right?
A. Yes.
Q. Was there any explanation to any managers what does that mean?
A. So I don't have any record in here that I talked to any managers, and -- and I -- you know, in terms of whether Kimberlee Foye or one of the fitness-for-duty nurses did or Deb Gengler did, I don't know.
The typical process, as I said, if -- if they -- if there is a restriction that isn't clear to the managers, and it -- and it is a restriction that they think might be the deciding factor in whether they can do essential job functions, then the process is for them to get clarification from us.
You know, in this case for Mr. Carrillo, there were other issues that were pretty clear in the job descriptions that would be something that would interfere with essential job functions. You know, for instance, climbing at unprotected heights

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because they sometimes have to climb on locomotives, working with high voltage electricity which -- working around moving equipment in the shop and -- and also possibly operating overhead cranes and forklifts and all those things that were pretty clearly stated in the work restrictions.
And I -- I don't know, but I -- I think it seems likely that the managers found there were enough things that were going to interfere with essential job functions and couldn't be accommodated that that may have been the basis for the decision, and they didn't need to clarify the thing about critical decision making.
But if they had -- if that had been an important deciding factor, the process would have been for them to call us and get clarification.
Q. You're totally guessing about what restriction disqualified him from particular jobs, including his electrician job, right?
MR. ORTBALS: Objection to form.
THE WITNESS: No, I'm -- I'm not totally guessing. I don't know specifically what it was, but I know -- I've been in these -- like, I've been in these shops. I know a fair amount about what, like, diesel electricians do and -- and

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from past experience, and -- and I know that many of those are essential job functions that can't be accommodated, and I don't know what it was in this case.
BY MR. KASTER:
Q. How about being screened out of different jobs as a part of this process? Do you know whether the critical decision making disqualification screened him out of other positions that he could have transferred or moved to?
A. I don't know, but in that case, if it was working with Kimberlee Foye, I've worked with her enough to know if there's some concern about a specific restriction and the restriction is perhaps ambiguous, that she would contact me and the fitness-for-duty nurses, and we would work on getting clarification both about what the restriction meant and what -- what the potential duties and safety concerns of the new job are.
Q. If someone had called you about this particular restriction, the critical decision making restriction, would you have said "Oh, that's a mistake, that's not relevant"?
A. I -- I don't know if I would have said

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it's a mistake. I would say that -- that it needs to be clarified about what we mean.
Q. You would have said "That's ambiguous"?
A. I would say -- I probably would have said it's ambiguous, yes.
MR. KASTER: That's all the questions I have for you, Doctor. Thank you.
MR. ORTBALS: No questions. We'll read and sign.
THE VIDEOGRAPHER: We're going off the record at 12:09 p.m.
(WHEREUPON, the videotaped deposition of DR. JOHN HOLLAND was concluded at 12:09 p.m. Pacific time.)
***

REPORTER'S CERTIFICATE

STATE OF MINNESOTA)
)SS.
COUNTY OF HENNEPIN)

I hereby certify that I reported the remote videotaped deposition of DR. JOHN HOLLAND on November 17, 2021, via Veritext Virtual Videoconference, and that the witness was by me first duly sworn to tell the whole truth;

That the testimony was transcribed by me and is a true record of the testimony of the witness;

That the cost of the original has been charged to the party who noticed the deposition, and that all parties who ordered copies have been charged at the same rate for such copies;

That I am not a relative or employee or attorney or counsel of any of the parties, or a relative or employee of such attorney or counsel;

That I am not financially interested in the action and have no contract with the parties, attorneys, or persons with an interest in the action that affects or has a substantial tendency to affect my impartiality;

That the right to read and sign the deposition by the witness was not waived reserved.

WITNESS MY HAND AND SEAL this 24th day of November, 2021.

Jayne M. Seward
Notary Public, Hennepin County, Minnesota
My commission expires January 31, 2025

Veritext Legal Solutions
1100 Superior Ave
Suite 1820
Cleveland, Ohio 44114
Phone: 216-523-1313

November 29, 2021

To: Mr. Ortbals

Case Name: Carrillo, Joseph v. Union Pacific Railroad Company

Veritext Reference Number: 4890881

Witness: Dr. John Holland Deposition Date: 11/17/2021

Dear Sir/Madam:

Enclosed please find a deposition transcript. Please have the witness review the transcript and note any changes or corrections on the included errata sheet, indicating the page, line number, change, and the reason for the change. Have the witness' signature notarized and forward the completed page(s) back to us at the Production address shown above, or email to production-midwest@veritext.com.

If the errata is not returned within thirty days of your receipt of this letter, the reading and signing will be deemed waived.

Sincerely,
Production Department

NO NOTARY REQUIRED IN CA

DEPOSITION REVIEW
CERTIFICATION OF WITNESS

ASSIGNMENT REFERENCE NO: 4890881
CASE NAME: Carrillo, Joseph v. Union Pacific Railroad Company
DATE OF DEPOSITION: 11/17/2021
WITNESS' NAME: Dr. John Holland
In accordance with the Rules of Civil Procedure, I have read the entire transcript of my testimony or it has been read to me.
I have made no changes to the testimony as transcribed by the court reporter.

_____ _____
Date Dr. John Holland

Sworn to and subscribed before me, a Notary Public in and for the State and County, the referenced witness did personally appear and acknowledge that:

They have read the transcript;
They signed the foregoing Sworn Statement; and
Their execution of this Statement is of their free act and deed.

I have affixed my name and official seal this _____ day of_____, 20____.

_____
Notary Public

_____
Commission Expiration Date

DEPOSITION REVIEW
CERTIFICATION OF WITNESS

ASSIGNMENT REFERENCE NO: 4890881
CASE NAME: Carrillo, Joseph v. Union Pacific Railroad Company
DATE OF DEPOSITION: 11/17/2021
WITNESS' NAME: Dr. John Holland
In accordance with the Rules of Civil Procedure, I have read the entire transcript of my testimony or it has been read to me.
I have listed my changes on the attached Errata Sheet, listing page and line numbers as well as the reason(s) for the change(s).
I request that these changes be entered as part of the record of my testimony.

I have executed the Errata Sheet, as well as this Certificate, and request and authorize that both be appended to the transcript of my testimony and be incorporated therein.

_____ _____
Date Dr. John Holland

Sworn to and subscribed before me, a Notary Public in and for the State and County, the referenced witness did personally appear and acknowledge that:
They have read the transcript;
They have listed all of their corrections in the appended Errata Sheet;
They signed the foregoing Sworn Statement; and
Their execution of this Statement is of their free act and deed.
I have affixed my name and official seal this _____ day of_____, 20____.

_____
Notary Public

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Commission Expiration Date

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Date Dr. John Holland
SUBSCRIBED AND SWORN TO BEFORE ME THIS _____
DAY OF _____, 20_____ .

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Notary Public

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Commission Expiration Date